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6 Attorneys for Complainant

8 **BEFORE THE**
9 **STRUCTURAL PEST CONTROL BOARD**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 Y2K EXTERMINATING
Rodrigo Lopez, Owner (unlicensed)
Nancy Ann Walker, Qualifying Manager

14 Company Registration Certificate No. PR 4287
Branch Office Registration No. BR 4945, and
15 Operator's License No. OPR 10501

16 Respondents.

Case Nos. 2007-14, 2007-18, 2007-20,
2007-26 and 2006-61

OAH Nos. L2007050433, L2007050435,
L2007050436, L2007050438,
L2007050439

**DEFAULT DECISION
AND ORDER (AS TO RESPONDENT
NANCY WALKER AND Y2K
EXTERMINATING, ONLY)**

[Gov. Code, §11520]

18 **FINDINGS OF FACT**

19 1. On or about January 6, 2006, Complainant Kelli Okuma, in her official
20 capacity as the Registrar/Executive Officer of the Structural Pest Control Board (Board), filed
21 Accusation Nos. 2007-14, 2007-18, 2007-20, 2007-26 and 2006-61 against Y 2 K Exterminating,
22 Rodrigo Lopez aka Rigo Lopez, Owner, Nancy Ann Walker, Qualifying Manager (Respondent
23 Walker) before the Board.

24 2. On or about March 25, 2003, the Board issued Company Registration
25 Certificate No. PR 4287 in Branch 3 to Respondent Y2k Exterminating, with Rigo Lopez as
26 owner and Respondent Walker as Qualifying Manager. The Company Registration Certificate
27 was in full force and effect at all times relevant to the charges brought herein.

28 ///

1 3. On or about September 15, 2003, the Board issued Branch Office
2 Registration Number BR 4945 to Respondent Y2k Exterminating, with Respondent Walker as
3 Branch Office Supervisor. The Registration was in full force and effect at all times relevant to
4 the charges brought herein.

5 4. On or about November 20, 2001, the Board issued Operator's License
6 Number OPR 10501 in Branch 3 to Respondent Walker. The license was in full force and effect
7 at all times relevant to the charges brought herein and expired on June 30, 2007.

8 5. On or about May 18, 2006, Pamela Van Kesteren, an employee of the
9 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.
10 2007-14, 2007-18, 2007-20, 2007-26 and 2006-61, Statement to Respondent, Notice of Defense,
11 Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to
12 Respondent's addresses of record with the Board, which was and is:

13 PO Box 3005
14 2021 Troy Avenue
15 South El Monte, California 91733

16 and,

17 7974 Haven Ave. Ste. 180
18 Rancho Cucamonga, CA 91730.

19 6. Service of the Accusations were effective as a matter of law under the
20 provisions of Government Code section 11505, subdivision (c).

21 7. On or about August 23, 2006, Respondent Walker signed and returned a
22 Notice of Defense, through her attorney Donald Brown, Esq. requesting a hearing in these
23 matters. On November 16, 2006, Donald Brown, Esq. notified the Board that he that no longer
24 represents Respondent Walker and that she may be reached at the following address: P.O. Box
25 210, Twin Peaks, CA 92391. His letter and original Notice of Defense are attached as Exhibit A.
26 A Notice of Hearing was served by mail at Respondent's attorney's address and her address of
27 record informing her that an administrative hearing in this matter was scheduled for August 6,
28 2007 and August 27, 2007. (See Notice of Hearing and certified service documents marked
"refused" by Respondent, attached as Exhibit B.) Respondent failed to appear at either day of the

1 hearing.

2 8. The Administrative Law Judge made a finding of fact in the Proposed
3 Decision that Respondent Walker "surrendered her license to the Board and did not appear at the
4 administrative hearing, *in spite of having received proper notice of the hearing.*" (Emphasis
5 added.)

6 8. Government Code section 11506 states, in pertinent part:

7 (c) The respondent shall be entitled to a hearing on the merits if the
8 respondent files a notice of defense, and the notice shall be deemed a specific
9 denial of all parts of the accusation not expressly admitted. Failure to file a notice
of defense shall constitute a waiver of respondent's right to a hearing, but the
agency in its discretion may nevertheless grant a hearing.

10 9. California Government Code section 11520 states, in pertinent part:

11 (a) If the respondent either fails to file a notice of defense or to appear at
12 the hearing, the agency may take action based upon the respondent's express
admissions or upon other evidence and affidavits may be used as evidence without
any notice to respondent.

13
14 10. Pursuant to its authority under Government Code section 11520, the Board
15 finds Respondent Walker is in default. The Board will take action without further hearing and,
16 based on the evidence on file herein, finds that the allegations in Accusation Nos. 2007-14,
17 2007-18, 2007-20, 2007-26 and 2006-61 are true.

18 11. The total cost for investigation and enforcement in connection with the
19 Accusation are \$20,000.00 as of January 20, 2009.

20 DETERMINATION OF ISSUES

21 1. Based on the foregoing findings of fact, Respondent Y 2 K Exterminating,
22 Rodrigo Lopez aka Rigo Lopez, Owner, Nancy Ann Walker, Qualifying Manager has subjected
23 its Company Registration Certificate No. PR 4287, its Branch Office Registration No. BR 4945
24 and Respondent Walker's Operator's License No. OPR 10501 to discipline.

25 2. The agency has jurisdiction to adjudicate this case by default.

26 3. The Board is authorized to revoke Respondent's Branch Office
27 Registration, Operator's License and Company Registration Certificate based upon the following
28 violations alleged in the Accusations:

1 Business and Professions Code section 8514, 8516, 8518, 8519, 8622, 8624,
2 8625, 8638, 8641, 8642, 8644, 8652, 8654, and California Code of Regulations, title 16,
3 sections 1937.14, 1990, 1991, and 1993.

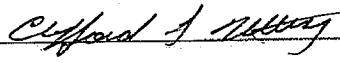
4 ORDER

5 IT IS SO ORDERED that Company Registration Certificate No. PR 4287 and
6 Branch Office Registration No. BR 4945, heretofore issued to Respondent Y 2 K Exterminating,
7 Rodrigo Lopez aka Rigo Lopez, Owner, Nancy Ann Walker, Qualifying Manager, and
8 Operator's License No. OPR 10501, heretofore issued to Respondent Walker, are revoked.

9 Pursuant to Government Code section 11520, subdivision (c), Respondent may
10 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
11 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
12 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
13 statute.

14 This Decision shall become effective on April 11, 2009.

15 It is so ORDERED March 12, 2009

16
17 
18 FOR THE STRUCTURAL PEST CONTROL BOARD

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22 60373527_1.wpd

23 DOJ docket number: LA2006502243, LA2006502426, LA2006502427, LA2006600469 and LA2006601624

24 Attachment:

25 Exhibit A: Notice of Defense and Counsel's Notification of Non-Representation
26 Exhibit B: Notice of Hearing and certified service documents marked "refused"

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of the State of California
2 CHRISTINA M. THOMAS, State Bar No. 171168
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10 **BEFORE THE**
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:
13 **Y 2 K EXTERMINATING**
Rodrigo Lopez, a.k.a. Rigo Lopez, Owner
14 (Unlicensed)
Nancy Ann Walker, Qualifying Manager
15 2021 Troy Avenue
South El Monte, CA 91733
16 Company Registration Certificate No. PR 4287,

17 **Y 2 K EXTERMINATING**
Nancy Ann Walker, Branch Office Supervisor
18 7974 Haven Avenue, Suite 180
Rancho Cucamonga, CA 91730
19 Branch Office Registration No. BR 4945,

20 **NANCY ANN WALKER**
2021 Troy Avenue
21 South El Monte, CA 91733
Operator's License No. OPR 10501,
22

EDWARD ANDREW AVILEZ, JR.
23 2021 Troy Avenue
South El Monte, CA 91733
24 Field Representative's License No. FR 34165,

25 **MICHAEL J. HOWE**
P.O.Box 3005
26 S. El Monte, CA 91733
Field Representative's License No. FR15670,
27
28

Case No. 2007-26

A C C U S A T I O N

1 **JAVIER ZAVALA**
P.O.Box 3005
2 S. El Monte, CA 91733
Field Representative's License No. FR 22365,
3 and

4 **DALE EDWARD DAWLEY**
12190 Fineview Street
5 El Monte, CA 91733
Field Representative's License No. FR33978
6

Respondents.

7
8 Complainant alleges:

9 **PARTIES**

10 1. Kelli Okuma ("Complainant") brings this Accusation solely in her official
11 capacity as the Registrar of the Structural Pest Control Board ("Board"), Department of
12 Consumer Affairs.

13 **Y 2 K Exterminating**
14 **Company Registration Certificate No. PR 4287**

15 2. On or about March 25, 2003, the Board issued Company Registration
16 Certificate Number PR 4287 in Branch 3 (termite) to Y 2 K Exterminating ("Respondent
17 Y 2 K"), with Rodrigo Lopez, also known as Rigo Lopez ("Lopez"), as owner and Nancy Ann
18 Walker ("Respondent Walker"), as qualifying manager. On October 18, 2005, Respondent Y 2
19 K paid a fine of \$503 levied by the Board for said Respondent's violation of Business and
20 Professions Code ("Code") section 8516, subdivision (b).

21 **Y 2 K Exterminating**
22 **Branch Office Registration No. BR 4945**

23 3. On or about September 15, 2003, the Board issued Branch Office
24 Registration Number BR 4945 to Respondent Y 2 K with Respondent Walker as branch office
25 supervisor.

26 **Nancy Ann Walker**
27 **Operator's License No. OPR 10501**

28 4. On or about November 20, 2001, the Board issued Operator's License

1 Number OPR 10501 in Branch 3 to Respondent Walker, employee of Gallatin Exterminators,
2 Inc. ("Gallatin.") Respondent left the employ of Gallatin on February 11, 2003. On March 25,
3 2003, Respondent became the qualifying manager for Respondent Y 2 K. On September 15,
4 2003, Respondent became the branch office supervisor for Respondent Y 2 K. Respondent's
5 operator's license will expire on June 30, 2007, unless renewed.

6 **Edward Andrew Avilez, Jr.**
7 **Field Representative's License No. FR 34165**

8 5. On or about January 16, 2002, the Board issued Field Representative's
9 License Number FR 34165 in Branch 3 to Edward Andrew Avilez, Jr. ("Respondent Avilez"),
10 employee of Tri-Ace Termite & Pest Control ("Tri-Ace"). Respondent left the employ of Tri-
11 Ace on September 20, 2002. On January 15, 2005, Respondent became employed by
12 Respondent Y 2 K. Respondent's field representative's license will expire on June 30, 2007,
13 unless renewed.

14 **Michael J. Howe**
15 **Field Representative's License No. FR15670**

16 6. On or about November 3, 1987, the Board issued Field Representative's
17 License No. FR15670 in Branch 3 to Michael Joseph Howe ("Respondent Howe.") Field
18 Representative's License No. FR15670 is currently in effect and renewed through June 30, 2008.

19
20 **Javier Zavala**
21 **Field Representative's License No. FR22365**

22 7. On December 27, 1990, Registered Applicator's License No. RA 26544
23 was issued to Javier Antonio Zavala. ("Respondent Zavala.") On or about August 16, 1993,
24 Registered Applicator's License No. RA 26544 was canceled when the Board issued Field
25 Representative's License No. FR22365 to Respondent Zavala. Field Representative's License
26 No. FR22365 is currently in effect and is renewed through June 30, 2008.

27 **Dale Edward Dawley**
28 **Field Representative's License No. FR33978**

8. On or about November 7, 2001, the Board issued Field Representative's License No. FR33978 to Dale Edward Dawley ("Respondent Dawley"), employee of Termite Masters, Inc., Respondent left the employ of Termite Masters on February 1, 2003. On April 15, 2003, Respondent became employed with No Nonsense Termite Company Inc., and left its employment on July 24, 2003. On August 25, 2004, Respondent became employed by Respondent Y2K. Respondent's Field Representative license will expire on June 30, 2007 unless renewed.

JURISDICTION

9. Code section 8620 provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the holder, while a licensee or applicant, has committed any acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a civil penalty.

10. Code section 8624 states:

If the board suspends or revokes an operator's license and one or more branch offices are registered under the name of the operator, the suspension or revocation may be applied to each branch office.

If the operator is the qualifying manager, a partner, responsible officer, or owner of a registered structural pest control company, the suspension or revocation may be applied to the company registration.

The performance by any partnership, corporation, firm, association, or registered company of any act or omission constituting a cause for disciplinary action, likewise constitutes a cause for disciplinary action against any licensee who, at the time the act or omission occurred, was the qualifying manager, a partner, responsible officer, or owner of the partnership, corporation, firm, association, or registered company whether or not he or she had knowledge of, or participated in, the prohibited act or omission.

11. Code section 8625 states:

The lapsing or suspension of a license or company registration by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license or company registration shall not deprive the board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such licensee or company, or to render a decision suspending or revoking such license or registration.

12. Code section 8654 states:

Any individual who has been denied a license for any of the reasons specified in Section 8568, or who has had his or her license revoked, or whose license is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a member, officer, director, associate, qualifying manager, or responsible managing employee of any partnership, corporation, firm, or association whose application for a company registration has been denied for any of the reasons specified in Section 8568, or whose company registration has been revoked as a result of disciplinary action, or whose company registration is under suspension, and while acting as such member, officer, director, associate, qualifying manager, or responsible managing employee had knowledge of or participated in any of the prohibited acts for which the license or registration was denied, suspended or revoked, shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee of a registered company, and the employment, election or association of such person by a registered company is a ground for disciplinary action.

STATUTORY AND REGULATORY PROVISIONS

(Statutory Provisions)

13. Code section 8514.5 states, in pertinent part:

It is unlawful for any registered company under this chapter when billing for any subcontracted work . . . to charge, bill or otherwise solicit payment from the consumer for any structural fumigation work not actually rendered by the registered company or under its direct supervision unless the consumer, prior to authorizing the performance of the work, is provided in writing with the following statement:

“NOTICE: The charge for service that this company subcontracts to another registered company may include the company’s charges for arranging and administering such services that are in addition to the direct costs associated with paying the subcontractor. You may accept (company’s name’s) bid or you contract directly with another registered company licensed to perform the work. If you choose to contract directly with another registered company, (company name) will not in any way be responsible for any act or omission in the performance of work that you directly contract with another to perform.”

14. Code section 8516 states, in pertinent part:

....

(b) No registered company or licensee shall commence work on a contract, or sign, issue, or deliver any documents expressing an opinion or statement relating to the absence or presence of wood destroying pests or organisms until an inspection has been made by a licensed Branch 3 field representative or operator. The address of each property inspected or upon which work is completed shall be reported on a form prescribed by the board and shall be filed with the board no later than 10 business days after the commencement of an inspection or upon completed work.

Every property inspected pursuant to this subdivision or Section 8518 shall be assessed a filing fee pursuant to Section 8674.

1 Failure of a registered company to report and file with the board the
2 address of any property inspected or work completed pursuant to Section 8518 or
3 this section is grounds for disciplinary action and shall subject the registered
4 company to a fine of not more than two thousand five hundred dollars (\$2,500).

5 A written inspection report conforming to this section and a form
6 approved by the board shall be prepared and delivered to the person requesting the
7 inspection or to the person's designated agent within 10 business days of the
8 inspection, except that an inspection report prepared for use by an attorney for
9 litigation purposes is not required to be reported to the board. The report shall be
10 delivered before work is commenced on any property. The registered company
11 shall retain for three years all original inspection reports, field notes, and activity
12 forms.

13 Reports shall be made available for inspection and reproduction to the
14 executive officer of the board or his or her duly authorized representative during
15 business hours. Original inspection reports or copies thereof shall be submitted to
16 the board upon request within two business days.

17 The following shall be set forth in the report:

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.....
2) The name and address of the person or firm ordering the report.

3) The name and address of any person who is a party in interest.

.....
6) A foundation diagram or sketch of the structure or structures or portions of the
structure or structures inspected, indicating thereon the approximate location of
any infested or infected areas evident, and the parts of the structure where
conditions that would ordinarily subject those parts to attack by wood destroying
pests or organisms exists.

7) Information regarding the substructure, foundation walls and footings,
porches, patios and steps, air vents, abutments, attic spaces, roof framing that
includes the eaves, rafters, fascias, exposed timbers, exposed sheathing, ceiling
joists, and attic walls or other parts subject to attack by
wood destroying pests or organisms. Conditions usually deemed likely to lead to
infestation, such as earth-wood contacts, excessive cellulose debris, faulty grade
levels, excessive moisture conditions, evidence of roof leaks, and insufficient
ventilation are to be reported.

8) One of the following statements, as appropriate, printed in bold type:

(A) The exterior surface of the roof was not inspected. If you want the water
tightness of the roof determined, you should contact a roofing contractor who is
licensed by the Contractors' State License Board.

(B) The exterior surface of the roof was inspected to determine whether or not
wood destroying pests or other organisms are present.

.....

10) Recommendations for corrective measures.

1
2 13) The inspection report shall contain the following statement: printed in
3 boldface type:

4 "NOTICE: Reports on this structure prepared by various registered companies shall list
5 the same findings (i.e. termite infestations, termite damage, fungus damage, etc.)
6 However, recommendations for correct these finding may vary from company to
7 company. You have a right to seek a second opinion from another company.

8 An estimate bid for repairs shall be given separately allocating the costs to perform each
9 and every recommendation for corrective measures as specified in subdivision (c) with the
10 original inspection report if the person who ordered the original inspection report so
11 requests, and if the registered company is regularly in the business of performing
12 corrective measures.

13 If no estimate or bid was given with the original inspection report, of thereafter, then
14 the registered company shall not be required to perform a reinspection.

15 A reinspection shall be an inspection of those items previously listed on an original report
16 to determine if the recommendations have been completed. Each reinspection shall be
17 reported on an original inspection report form and shall be labeled "Reinspection" in
18 capital letters by rubber stamp or typewritten. Each reinspection shall also identify the
19 original report by date and stamp numbers.

20 After four months from an original inspection, all inspections shall be original inspections
21 and not reinspections.

22 Any reinspection shall be performed for not more than the price of the registered
23 company's original inspection price and shall be completed within 10 working days after a
24 reinspection had been ordered.

25 15. Code section 8518 states, in pertinent part:

26 When a registered company completes work under a contract, it shall
27 prepare, on a form prescribed by the board, a notice of work completed and not
28 completed, and shall furnish that notice to the owner of the property or the owner's
agent within 10 working days after completing the work. The notice shall include
a statement of the cost of the completed work and estimated cost of work not
completed. The address of each property inspected or upon which work was
completed shall be reported on a form prescribed by the board and shall be filed
with the board no later than 10 working days after completed work. Every property
upon which work is completed shall be assessed a filing fee pursuant to Section
8674. Failure of a registered company to report and file with the board the address
of any property upon which work was completed pursuant to subdivision (b) of
Section 8516, subdivision (b) of Section 8516.1, or Section 8518 are grounds for
disciplinary action and shall subject the registered company to a fine or not more
than two thousand five hundred dollars (\$2,500). The registered company shall
retain for three years all original notices of work completed, work not completed
and activity forms. Notices of work completed and not completed shall be made
available for inspection and reproduction to the executive during business hours.
Original notices of work completed or not completed or copies thereof shall be
submitted to the board upon request within two business days.

16. Code section 8519 states:

Certification as used in this section means a written statement by the registered company attesting to the statement contained therein relating to the absence or presence of wood-destroying pests or organisms and, listing such recommendations, if any, which appear on an inspection report prepared pursuant to section 8516, and which relate to (1) infestation or infection of wood-destroying pests or organisms found, or (2) repair of structurally weakened members caused by such infestation or infection, and which recommendations have not been completed at the time of certification.

Any registered company which makes an inspection report pursuant to Section 8516, shall, if requested by the person ordering the inspection report, prepare and deliver to that person or his or her designated agent, a certification, to provide:

(a) When the inspection report prepared pursuant to Section 8516 has disclosed to no infestation or infection: "This is to certify that the above property was inspected on ____ (date) in accordance with the Structural Pest Control Act and rules and regulations adopted pursuant thereto, and that no evidence of active infestation or infection was found in the visible and accessible areas."

(b) When the inspection report prepared pursuant to Section 8516 discloses infestation or infection and the notice of work completed prepared pursuant to Section 8518 indicates that all recommendations to remove that infestation or infection and to repair damage caused by that infestation or infection have been completed: "This is to certify that the property described herein is now free of evidence of active infestation or infection in the visible and accessible areas."

(c) When the inspection report prepared pursuant to Section 8516 discloses infestation or infection and the notice of work completed prepared pursuant to Section 8518 indicates that the registered company has not completed all recommendations to remove that infestation or infection or to repair damage caused by it: "This is to certify that the property described herein is now free of evidence of active infestation or infection in the visible and accessible areas except as follows: ____ (describing infestations, infections, damage, or evidence thereof, excepted)."

This certificate shall be accompanied by a copy of the inspection report prepared pursuant to Section 8516, and by a copy of the notice of work completed prepared pursuant to Section 8518, if notice has been prepared at the time of the certification, or the certification may be endorsed on and made apart of that inspection report or notice of work completed.

17. Code section 8538 states:

(a) A registered structural pest control company shall provide the owner or owner's agents, and tenant of the premises for which they work is to be done with clear written notice which contains the following statements and information using words with common everyday meaning:

(1) The pest to be controlled or in the case of wood roof cleaning and treatment registered company applications, the purpose of applying the wood preservative or preservatives.

(2) The pesticide or pesticides proposed to be used, and the active ingredient or ingredients.

1 (3) "State law requires that you be given the following information: CAUTION-
2 PESTICIDES ARE TOXIC CHEMICALS. Structural Pest Control Companies are
3 registered and regulated by the Structural Pest Control Board, and apply pesticides which
4 are registered and approved for use by the California Department of Pesticide Regulation
5 and the United States Environmental Protection Agency. Registration is granted when the
6 state finds that based on existing scientific evidence there are no appreciable risks if
7 proper use conditions are followed or that the risks are outweighed by the benefits. The
8 degree of risk depends upon the degree of exposure, so exposure should be minimized."

9 "If within 24 hours following application you experience symptoms similar to common
10 seasonal illness comparable to the flu, contact your physician or poison control center
11 (telephone number) and your pest control company immediately." (This statement shall
12 be modified to include any other symptoms of overexposure which are not typical of
13 influenza.)

14 "For further information, contact any of the following: Your Pest Control Company
15 (telephone number); Health Questions- the County Health Department (telephone
16 number); for Application information- the County Agricultural Commissioner (telephone
17 number) and for Regulatory Information- the Structural Pest Control Board (telephone
18 number and address)."

19 (4) If a contract for periodic pest control has been executed, the frequency with which the
20 treatment is to be done.

21 (b) In the case of Branch 1 applications, the notice, as prescribed by subdivision (a), shall
22 be provided at least 48 hours prior to application unless fumigation follows inspection by
23 less than 48 hours.

24 In the case of Branch 2, Branch 3 or wood roof cleaning and treatment registered company
25 applications, the notice as prescribed by subdivision (a) shall be provided no later than
26 prior to application. In either case, the notice shall be given to the owner, or owner's agent,
27 and tenant, if there is a tenant, in at least one of the following ways:

- 28 (1) First-class mail.
- (2) Posting in a conspicuous place on the real property.
- (3) Personal delivery.

If the building is commercial or industrial, a notice shall be posted in a conspicuous place,
unless the owner or owner's agent objects, in addition to any other notification required by
this section. The notice shall only be required to be provided at the time of
the initial treatment if a contract for periodic service has been executed. If the pesticide to
be used is changed, another notice shall be required to be provided in the manner
previously set forth herein.

(c) Any person or licensee who, or registered company which, violates any provision of
this section is guilty of a misdemeanor and is punishable as set forth in Section 8553.

18. Code section 8622 states:

When a complaint is accepted for investigation of a registered company, the
board, through an authorized representative, may inspect any or all property on
which a report has been issued pursuant to Section 8516 or a notice of completion
has been issued pursuant to Section 8518 by the registered company to determine

1 compliance with the provisions of this chapter and the rules and regulations issued
2 thereunder. If the board determines the property or properties are not in
3 compliance, a notice shall be sent to the registered company so stating. The
4 registered company shall 30 days from the receipt of the notice to bring such
5 property into compliance, and it shall submit a new original report or completion
6 notice or both and an inspection fee of not more than one hundred twenty-five
7 dollars (\$125) for each property inspected. If a subsequent reinspection is
8 necessary, pursuant to the board's review of the new original report or notice or
9 both, a commensurate reinspection fee shall also be charged. If the board's
10 authorized representative makes no determination or determines the property is in
11 compliance, no inspection fee shall be charged.

12 The notice sent to the registered company shall inform the registered
13 company that if it desires a hearing to contest the finding of noncompliance, the
14 hearing shall be requested by written notice to the board within 20 days of receipt
15 of the notice of noncompliance from the board. Where a hearing is not requested
16 pursuant to this section, payment of any assessment shall not constitute an
17 admission of any noncompliance charged.

18 19. Code section 8638 states:

19 Failure on the part of a registered company to complete any operation or
20 construction repairs for the price stated in the contract for such operation or
21 construction repairs or in any modification of such contract is a ground for
22 disciplinary action.

23 20. Code section 8641 states:

24 Failure to comply with the provisions of this chapter, or any rule or
25 regulation adopted by the board, or the furnishing of a report of inspection without
26 the making of a bona fide inspection of the premises for wood-destroying pests or
27 organisms, or furnishing a notice of work completed prior to the completion of the
28 work specified in the contract, is a ground for disciplinary action.

21 21. Code section 8642 states:

22 That "[t]he commission of any grossly negligent or fraudulent act by the
23 licensee as a pest control operator, field representative, or applicator or by a
24 registered company is a ground for disciplinary action."

25 22. Code section 8644 states:

26 Fraud or misrepresentation, after inspection, by any licensee or registered
27 company engaged in pest control work of any infestation or infection of wood-
28 destroying pests or organisms found in property or structures, or respecting any
conditions of the structure that would ordinarily subject structures to attack by
wood-destroying pests or organisms, whether or not a report was made pursuant to
Sections 8516 and 8517 of this Code, is a ground for disciplinary action.

(Regulatory Provisions)

23. California Code of Regulations, title 16, section ("Regulation") 1937.14
states:

1 All work completed by licensees or registered companies shall be done
2 within the specific requirements of any plans or specifications and shall meet
3 accepted trade standards for good and workmanlike construction in any material
4 respect, and shall comply with provisions of Section 2516(c)(1), (2), (4) and (6) of
5 Title 24, California Code of Regulations.

6 24. Regulation 1990 states, in pertinent part:

7 (a) All reports shall be completed as prescribed by the board. Copies filed
8 with the board shall be clear and legible. All reports must supply the information
9 required by Section 8516 of the Code and the information regarding the pesticide
10 or pesticides used as set forth in Section 8538 of the Code, and shall contain or
11 describe the following:

12 (3) Infestations, infections or evidence thereof.

13

14 (4) Wood members found to be damaged by wood destroying pests or organisms.

15 (b) Conditions usually deemed likely to lead to infestation or infection
16 include, but are not limited to:

17

18 (3) Excessive Cellulose Debris. This is defined as any cellulose debris of a
19 size that can be raked or larger. Stumps and wood imbedded in footings and in
20 earth contact shall be reported.

21

22 (5) Commonly controllable moisture conditions which would foster the
23 growth of a fungus infection materially damaging to woodwork .

24

25 (f) The following language shall appear just prior to the first
26 finding/recommendation on each separated report:

27 "This is a separated report which is defined as Section I/Section II conditions
28 evident on the date of the inspection. Section I contains items where there is visible
evidence of active infestation, infection or conditions that have resulted in or from
evidence of active infestation or infection. Section II items are conditions deemed likely
to lead to infestation or infection but where no visible evidence of such was found.
Further inspection items are defined as recommendations to inspect area(s) which during
the original inspection did not allow the inspector access to complete the inspection and
cannot be defined as Section I or Section II."

29 25. Regulation 1991 states, in pertinent part:

30 (a) Recommendations for corrective measures for the conditions found
31 shall be made as required by paragraph 9 of subdivision (b) of Section 8516 of the
32 code and shall also conform with the provisions of Title 24 of the California Code
of Regulations and any other applicable local building code, and shall accomplish

1 the following:

2
3 (5) Structural members which appear to be structurally weakened by
4 wood-destroying pests to the point where they no longer serve their intended
5 purpose shall be replaced or reinforced. Structural members which are structurally
6 weakened by fungus to the point where they no longer serve their intended purpose
7 shall be removed or, if feasible, may remain in place if another structural member
8 is installed adjacent to it to perform the same function, if both members are dry
9 (below 20% moisture content), and if the excessive moisture condition responsible
10 for the fungus damage is corrected. Structural members which appear to have only
11 surface fungus damage may be chemically treated and/or left as is if, in the opinion
12 of the inspector, the structural member will continue to perform its originally
13 intended function and if correcting the excessive moisture condition will stop the
14 further expansion of the fungus.

15
16 (9) For the extermination of subterranean termite infestations, treat an infested area
17 under the structure when subterranean termite tubes are found connect to the ground or
18 when active infestations are found in the ground. Subterranean termite tubes shall be
19 removed where accessible.

20
21 26. Regulation 1993 states, in pertinent part:

22 All of the following reports must be in compliance with the requirements of
23 Section 8516 of the code. All reports must be on the form prescribed by the board
24 and filed with the board with stamps affixed.

25
26 (d) A supplemental report is the report on the inspection performed on
27 inaccessible areas that have been made accessible as recommended on a previous
28 report. Such report shall indicate the absence or presence of wood-destroying pests
or organisms or conditions conducive thereto. This report can also be used to
correct, add, or modify information in a previous report. A licensed operator or
field representative shall refer to the original report in such a manner to identify it
clearly.

Cost Recovery

29 27. Code section 125.3 states, in pertinent part, that a Board may request the
30 administrative law judge to direct a licentiate found to have committed a violation or violations
31 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
32 enforcement of the case.

FACTUAL BACKGROUND

1 28 On and between October 3, 2004, Respondent Y2 K performed a Wood
2 Destroying Organisms Inspection ("WDO") at the subject property located at 441 N. Ellen Drive,
3 West Covina, CA 91790.

4 29 On and between October 3, 2004, Respondent Dale Dawley, a field
5 representative, performed the inspection and prepared the inspection report at the subject property.
6 The inspection report made recommendations to remove, replace, fill or reinforce the decay fungi
7 damage, and to chemically treat the visible and accessible drywood termites and to remove and/or
8 cover accessible pellets. The inspection report failed to include the address of the person or firm
9 ordering the inspection report or any owner/party of interest or sent-to information. It also
10 reported that the stall shower was water tested, when there is no stall shower. The report also
11 made a finding and recommendation regarding the patio, yet at the subject property there is no
12 patio. Pursuant to Code section 8516(b)(6)(7) and California Code of Regulations section
13 1990(b)(3), Respondents failed to report the cellulose debris and form stake in the substructure on
14 the October 3, 2004 "complete," "separated" inspection report

15 The inspection report also failed to include the required separated report statement, a
16 subcontract cost statement, a second opinion statement, and it contained a reinspection statement
17 and a roof statement that were not in compliance with the Structural Pest Control Act.

18

19 30. On December 2, 2004, Respondent Y2K issued a standard notice of work
20 completed and not completed (Completion Notice) on the subject address. The Completion
21 Notice certified that all Respondent Dawley's recommendations had been completed and that the
22 subject address was now free of active infestation or infection. The Notice also failed to include
23 the address of the individual or firm ordering the required information such as the name or address
24 of property owner/party of interest and the address where the report is to be sent and failed to
25 contain a certification statement that was in compliance with the Structural Pest Control Act.

26 31. On December 29, 2004, escrow closed on the subject address.

27 32. On December 19, 2005, the Board received a complaint from the homeowner,
28 Vivian Zavala, which alleged, inter alia, that Respondent Y2K failed to properly report conditions

1 related to structural pest control and failed to complete the recommended subterranean termite
2 work prior to the close of escrow.

3 33. On January 9, 2006, Field Representative Michael Howe (Respondent Howe)
4 performed the WDO Inspection and prepared the inspection report which contained 12 findings
5 and recommendations. The Section I findings involved evidence of subterranean termites at the
6 substructure wood timbers; decay fungi damage at the front porch wood members; evidence of
7 drywood termite damage at the patio and exterior wood members; and evidence of subterranean
8 termites at the exterior wood members. The report's recommendations were to trench and pressure
9 treat for the control of subterranean termites with a state-registered chemical; to repair, replace,
10 reinforce, or fill the decay fungi damaged wood members; to chemically treat visible and
11 accessible drywood termite infestations and to remove and/or cover accessible pellets; and to
12 repair, replace, reinforce or fill the drywood termite damaged wood members. The Section II
13 finding involved evidence of cellulose debris in the substructure, with a recommendation to
14 remove and dispose of the cellulose debris as necessary to correct. The report indicated that the
15 subject company would handle all treatments/repairs free of charge.

16 The report failed to recommend removing the accessible subterranean termite tubes. It also
17 failed to include the required separated report statement just prior to the first finding and
18 recommendations, as well as a subcontract cost statement and a second opinion statement. The
19 report's reinspection, certification, roof, and pesticide statements were not in compliance with the
20 Structural Pest Control Act.

21 The January 9, 2006 inspection report also indicated that there was evidence of drywood
22 termites in the attic with a recommendation to treat the reported infestations and to remove/cover
23 accessible pellets; yet the specialist found no evidence of previous infestation.

24 34. On or about January 17, 2006, Board Inspector Steven Smith prepared his
25 Report of Findings (ROF) on the incident address. The ROF consisted of the following violations:
26 a.. Pursuant to Code section 8516(b)(6)(7) and California Code of Regulations section
27 1990(b)(3), Respondents failed to report the cellulose debris and form stake in the substructure on
28 the October 3, 2004 "complete," "separated" inspection report.

- 1 b. Pursuant to Code section 8516(b)(6)(7) and California Code of Regulations sections
2 1990(a)(5) and (b)(5), Respondents failed to report and make a recommendation to correct the
3 excessive moisture conditions at the plywood roof sheathing and the gap between the wall on both
4 sides of the chimney on the east wall on the October 3, 2004 and January 9, 2006 "complete,"
5 "separated" inspection reports and in the substructure on the January 9, 2006 "complete,"
6 "separated" inspection reports..
- 7 c. Pursuant to Code sections 8516(b)(6)(7) and (b)(10) and California Code of Regulations
8 sections 1990(a)(3) and (a)(9), Respondents failed to report and make proper recommendations
9 regarding the evidence of subterranean termites in the substructure on the January 9, 2006
10 "complete," "separated" inspection report.
- 11 d. Pursuant to Code section 8516(b)(6)(7) and California Code of Regulations sections 1990(a)(3)
12 and (4), Respondents failed to report the evidence of subterranean termites at the attic framing and
13 subterranean termite and decay fungi damage at the substructure and exterior siding on the
14 January 9, 2006 "complete," "separated" and "supplemental" inspection reports.
- 15 e. Pursuant to Code section 8638, Respondents failed to complete the work regarding replacing,
16 repairing or filling the patio's decay fungi damage, removal of cellulose debris from the
17 substructure and the trenching and/or pressure treating for the subterranean termites in the
18 substructure and at the property's exterior on the January 9, 2006 "complete," "separated"
19 inspection report.
- 20 f. Pursuant to California Code of Regulations section 1937.14, Respondents failed to complete the
21 work in a quality and workmanlike manner regarding replacing the front porch load post and
22 barge rafter decay fungi damage on the January 9, 2006 "complete," "separated" inspection report.
- 23 g. Pursuant to Code section 8638(b), Respondents failed to prepare and deliver to the person
24 requesting the inspection, a copy of the inspection report prior to commencing work and the
25 January 9, 2006 WDO Inspection in violation of section 8516(b) of the Code, the work was
26 performed prior to the issuance of an inspection report
- 27 35. On or around March 4, 2006, Respondent Edward Avilez, a field representative,
28 performed the WDO Inspection and prepared the inspection report which contained 13 findings

1 and recommendations. The Section I findings involved old evidence of subterranean termites at
2 the attic and substructure wood timbers, subterranean termite damage at the substructure wood
3 members, and evidence of decay fungi. The report's recommendations were to scrape and/or
4 knock down and remove all evidence of subterranean termites and to remove and replace the
5 subterranean termite and the decay fungi damaged wood members as necessary to correct. The
6 Section II findings involved evidence of excessive moisture conditions and water stains, and
7 cellulose debris. The recommendations were to call a tradesman to address the damaged
8 conditions.

9 The report failed to include the required separated report statement prior to the first finding
10 and recommendations, as well as a subcontract cost statement and a second opinion statement.
11 The report's reinspection, roof, and pesticide statements were not in compliance with the
12 Structural Pest Control Act.

13 36. On or around May 13, 2006, Respondent Javier Zavala, a field representative,
14 performed the WDO Inspection and prepared the inspection report. The Section I findings
15 involved evidence of subterranean termites at the substructure. The report made no
16 recommendations. The Section II findings involved evidence of water stains but made no findings
17 regarding the form stake or excessive moisture in the substructure.

18 The report failed to include the required separated report statement prior to the first finding
19 and recommendations, as well as a subcontract cost statement and a second opinion statement.
20 The report's reinspection, roof, and pesticide statements were not in compliance with the
21 Structural Pest Control Act.

22 37. Respondent Y2K violated Code section 8622 when it took over four months to bring
23 the incident address into compliance (3 months longer than the law allows) and Code sections
24 8516 and 8519 when it issued three completion notices, two of which certified that the work was
25 completed, when in fact, it was not. Respondent Y2K also failed to file all of its WDO activities
26 with the Board.

27 FIRST CAUSE FOR DISCIPLINE

28 (Failure to Properly Prepare Inspection Report and Make Recommendations For

Corrective Measures)

38. Respondents Y 2 K, Walker, Howe, Avilez, Zavala, and Dawley are subject to disciplinary action pursuant to Code section 8516 and Regulation 1990 in that they failed to prepare proper inspection reports and they failed to recommend proper corrective measures relating to findings in the inspection reports as follows:

A. On and between October 3, 2004, Respondent Dale Dawley, a field representative, performed the inspection and prepared the inspection report at the subject property. The inspection report made recommendations to remove, replace, fill or reinforce the decay fungi damage, and to chemically treat the visible and accessible drywood termites and to remove and/or cover accessible pellets. Pursuant to Code section 8516(b)(6)(7) and California Code of Regulations section 1990(b)(3), Respondents failed to report the cellulose debris and form stake in the substructure on the October 3, 2004 "complete," "separated" inspection report. Respondents failed to report and make a recommendation to correct the excessive moisture conditions at the plywood roof sheathing and the gap between the wall on both sides of the chimney on the east wall on the October 3, 2004 and January 9, 2006 "complete," "separated" inspection reports and in the substructure on the January 9, 2006 "complete," "separated" inspection reports. The inspection report failed to include the address of the person or firm ordering the inspection report or any owner/party of interest or sent-to information. It also reported that the stall shower was water tested, when there is no stall shower. The report also made a finding and recommendation regarding the "patio," yet the subject property contains no patio.

The inspection report also failed to include the required separated report statement, a subcontract cost statement, a second opinion statement, and it contained a reinspection statement and a roof statement that were not in compliance with the Structural Pest Control Act.

B. On the January 9, 2006 inspection report, Respondent Howe's report failed to recommend removing the accessible subterranean termite tubes. Respondents failed to report and make a recommendation to correct the excessive moisture conditions at the plywood roof sheathing and the gap between the wall on both sides of the chimney on the east wall on the October 3, 2004 and January 9, 2006 "complete," "separated" inspection reports and in the

1 substructure on the January 9, 2006 "complete," "separated" inspection reports. It also failed to
2 include the required separated report statement just prior to the first finding and recommendations,
3 as well as a subcontract cost statement and a second opinion statement. The report's reinspection,
4 certification, roof, and pesticide statements were not in compliance with the Structural Pest
5 Control Act.

6 C. On or around March 4, 2006, Respondent Edward Avilez, a field representative,
7 performed the WDO Inspection and prepared the inspection report. The report failed to include
8 the required separated report statement prior to the first finding and recommendations, as well as a
9 subcontract cost statement and a second opinion statement. The report's reinspection, roof, and
10 pesticide statements were not in compliance with the Structural Pest Control Act.

11 D. On or around May 13, 2006, Respondent Javier Zavala, a field representative,
12 performed the WDO Inspection and prepared the inspection report. The Section I findings
13 involved evidence of subterranean termites at the substructure. The report made no
14 recommendations. The Section II findings involved evidence of water stains but made no findings
15 regarding the form stake or excessive moisture in the substructure.

16 The report failed to include the required separated report statement prior to the first finding
17 and recommendations, as well as a subcontract cost statement and a second opinion statement.
18 The report's reinspection, roof, and pesticide statements were not in compliance with the
19 Structural Pest Control Act.

20 E. Respondents are subject to disciplinary action pursuant to Code section 8516
21 (b) in that they failed to file with the Board all of the WDO activities involving the incident
22 address, no later than ten business days after the commencement of an inspection or upon
23 completed work. All of the WDO activities were not filed with the Board.

24 25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Failure to Properly Complete Repairs)**

27 39. Respondents Y 2 K, Walker, Howe, and Dawley are subject to disciplinary
28 action pursuant to Code section 8638 in that:

1 Respondents Y2K, Walker, and Howe failed to complete the work regarding
2 replacing, repairing or filling the patio's decay fungi damage, removal of cellulose debris from the
3 substructure and the trenching and/or pressure treating for the subterranean termites in the
4 substructure and at the property's exterior on the January 9, 2006 "complete," "separated"
5 inspection report.

6 Respondents also failed to complete the work regarding the repair of the reported
7 decay fungi and drywood termite damage. Respondent Dawley reported the damage on the
8 October 3, 2004, inspection report that was certified as having been completed on the December
9 2, 2004 Completion Notice. On December 19, 2005, the Board received a complaint from the
10 homeowner, Vivian Zavala, which alleged, inter alia, that Respondents failed to complete the
11 recommended subterranean termite work prior to the close of escrow.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Gross Negligence or Fraud)**

14 40. Respondents Y 2 K and Dawley are subject to disciplinary action pursuant
15 to Code section 8642 in that on and between October 3, 2004, Respondent Dale Dawley, a field
16 representative, performed the inspection and prepared the inspection report at the subject property.
17 The inspection report reported that the stall shower was water tested, when there is no stall
18 shower. The report also made a finding and recommendation regarding the patio, yet at the
19 subject property there is no patio.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Fraud)**

22 41. Respondents Y2K and Howe are subject to disciplinary action pursuant to
23 Code section 8644 in that in and around January 9, 2006, Howe committed fraudulent acts as
24 follows:

25 In violation of Code section 8642, Respondent Howe failed to issue a
26 proper inspection report. The January 9, 2006 inspection report indicated that there was evidence
27 of drywood termites in the attic with a recommendation to treat the reported infestations and to
28 remove/cover accessible pellets; yet the specialist found no evidence of previous infestation.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Poor Workmanship)**

3 42. Respondents Y 2 K and Walker are subject to disciplinary action pursuant
4 to Code section 8641 in that they failed to comply with Regulation 1937.14 by failing to perform
5 the corrective repairs at the subject property in a good and workmanlike manner in the following
6 respects:

7 a. Pursuant to California Code of Regulations section 1937.14,
8 Respondents failed to complete the work in a quality and workmanlike manner regarding
9 replacing the front porch load post and barge rafter decay fungi damage on the January 9, 2006
10 "complete," "separated" inspection report.

11 b. Respondents failed to complete the work regarding the repair of the
12 drywood termite and fungi decay damage reported on the October 3, 2004 inspection report that
13 was certified as completed on the December 2, 2004 Completion Notice.

14
15 **SIXTH CAUSE FOR DISCIPLINE**

16 **(Failure to Deliver and Prepare a Proper Supplemental Inspection Report)**

17 43. Respondents Y 2 K, Walker, and Zavala, are subject to disciplinary
18 action pursuant to Regulation section 1993 in that on or about May 19, 2006, Respondents failed
19 to prepare and deliver a proper supplemental inspection report regarding the subject property.

20 **SEVENTH CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with Board's Notice)**

22 44. Respondents Y 2 K and Walker are subject to discipline pursuant to Code
23 section 8641 in that as to the subject property, it failed to comply with Code section 8622.
24 Respondents failed to correct all of the items described in the Report of Findings within thirty
25 calendar days of receipt of the Board's notice.

26 **EIGHTH CAUSE FOR DISCIPLINE**

27 **(Failure to Comply with Board Regulations)**

28 45. All Respondents are subject to disciplinary action pursuant to Code section

8641 in that they failed to comply with Code sections 8516, 8622, 8641, 8642, and 8644, as set forth in paragraphs 1 through 44 above.

OTHER MATTERS

46. Pursuant to Code section 8624, the causes for discipline established as to Respondent Y 2 K Exterminating likewise constitute causes for discipline against Nancy Ann Walker regardless of whether Nancy Ann Walker had knowledge of or participated in the acts or omissions which constitute causes for discipline against Respondent Y 2 K Exterminating.

47. Pursuant to Code section 8624, if Operator's License Number OPR 10501, issued to Nancy Ann Walker, is suspended or revoked, the Board may suspend or revoke Company Registration Certificate Number PR 4287 issued to Y 2 K Exterminating, with Nancy Ann Walker as qualifying Manager.

48. Pursuant to Code section 8624, if Operator's License Number OPR 10501, issued to Nancy Ann Walker, is suspended or revoked, the Board may suspend or revoke Branch Office Registration Number BR 4945, issued to Y 2 K Exterminating with Nancy Ann Walker as branch office supervisor.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Structural Pest Control Board issue a decision:

1. Revoking or suspending Company Registration Certificate Number PR 4287, issued to Y 2 K Exterminating;

2. Revoking or suspending Branch Office Registration Number BR 4945, issued to Y 2 K Exterminating;

3. Revoking or suspending Operator's License Number OPR 10501, issued to Nancy Ann Walker;

4. Revoking or suspending Field Representative's License Number FR 34165, issued to Edward Andrew Avilez, Jr.;

5. Revoking or suspending Field Representative's License Number FR 15670 issued to Michael J. Howe;

- 1 6. Revoking or suspending Field Representative's License Number FR 22365
2 issued to Javier Zavala;
3 7. Revoking or suspending Field Representative's License Number FR3978
4 issued to Dale Edward Dawley;
5 8. Ordering Respondents Y 2 K Exterminating, Nancy Ann Walker, Edward
6 Andrew Avilez, Jr., Michael Howe, Javier Zavala, and/or Dale Edward Dawley to pay the
7 Structural Pest Control Board the reasonable costs of the investigation and enforcement of this
8 case, pursuant to Business and Professions Code section 125.3;
9 9. Taking such other and further action as deemed necessary and proper.

10 DATED: 12/8/05

11 

12 KELLI OKUMA
13 Registrar
14 Structural Pest Control Board
15 Department of Consumer Affairs
16 State of California

Complainant

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Attorneys for Complainant

**BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2007-20

Y 2 K EXTERMINATING

Rodrigo Lopez, a.k.a. Rigo Lopez, Owner
Nancy Ann Walker, Qualifying Manager
2021 Troy Avenue
South El Monte, CA 91733
Company Registration Certificate No. PR 4287,

ACCUSATION

Y 2 K EXTERMINATING

Nancy Ann Walker, Branch Office Supervisor
7974 Haven Avenue, Suite 180
Rancho Cucamonga, CA 91730
Branch Office Registration No. BR 4945, and

NANCY ANN WALKER

2021 Troy Avenue
South El Monte, CA 91733
Operator's License No. OPR 10501

Respondents.

Complainant alleges:

PARTIES

1. Kelli Okuma ("Complainant") brings this Accusation solely in her official capacity as the Registrar of the Structural Pest Control Board ("Board"), Department of Consumer

1 Affairs.

2 **Y 2 K Exterminating**
3 **Company Registration Certificate No. PR 4287**

4 2. On or about March 25, 2003, the Board issued Company Registration
5 Certificate Number PR 4287 in Branch 3 (Termite) to Y 2 K Exterminating ("Respondent
6 Y 2 K"), with Rodrigo Lopez, also known as Rigo Lopez ("Lopez"), as owner and Nancy Ann
7 Walker ("Respondent Walker"), as qualifying manager. On October 18, 2005, Respondent Y 2 K
8 paid a fine of \$503 levied by the Board for said Respondent's violation of Business and
9 Professions Code ("Code") section 8516, subdivision (b).

10 **Y 2 K Exterminating**
11 **Branch Office Registration No. BR 4945**

12 3. On or about September 15, 2003, the Board issued Branch Office
13 Registration Number BR 4945 to Respondent Y 2 K with Respondent Walker as branch office
14 supervisor.

15 **Nancy Ann Walker**
16 **Operator's License No. OPR 10501**

17 4. On or about November 20, 2001, the Board issued Operator's License
18 Number OPR 10501 in Branch 3 to Respondent Walker, employee of Gallatin Exterminators, Inc.
19 ("Gallatin"). Respondent left the employ of Gallatin on February 11, 2003. On March 25, 2003,
20 Respondent became the qualifying manager for Respondent Y 2 K. On September 15, 2003,
21 Respondent became the branch office supervisor for Respondent Y 2 K. Respondent's operator's
22 license will expire on June 30, 2007, unless renewed.

23 **JURISDICTION**

24 5. Code section 8620 provides, in pertinent part, that the Board may suspend
25 or revoke a license when it finds that the holder, while a licensee or applicant, has committed any
26 acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a
27 civil penalty.
28

1 6. Code section 8624 states:

2
3 If the board suspends or revokes an operator's license and one or more
4 branch offices are registered under the name of the operator, the suspension or
5 revocation may be applied to each branch office.

6
7 If the operator is the qualifying manager, a partner, responsible officer, or
8 owner of a registered structural pest control company, the suspension or revocation
9 may be applied to the company registration.

10
11 The performance by any partnership, corporation, firm, association, or
12 registered company of any act or omission constituting a cause for disciplinary
13 action, likewise constitutes a cause for disciplinary action against any licensee
14 who, at the time the act or omission occurred, was the qualifying manager, a
15 partner, responsible officer, or owner of the partnership, corporation, firm,
16 association, or registered company whether or not he or she had knowledge of, or
17 participated in, the prohibited act or omission.

18
19 7. Code section 8625 states:

20 The lapsing or suspension of a license or company registration by operation
21 of law or by order or decision of the board or a court of law, or the voluntary
22 surrender of a license or company registration shall not deprive the board of
23 jurisdiction to proceed with any investigation of or action or disciplinary
24 proceeding against such licensee or company, or to render a decision suspending or
25 revoking such license or registration.

26 8. Code section 8654 states:

27 Any individual who has been denied a license for any of the reasons
28 specified in Section 8568, or who has had his or her license revoked, or whose
license is under suspension, or who has failed to renew his or her license while it
was under suspension, or who has been a member, officer, director, associate,
qualifying manager, or responsible managing employee of any partnership,
corporation, firm, or association whose application for a company registration has
been denied for any of the reasons specified in Section 8568, or whose company
registration has been revoked as a result of disciplinary action, or whose company

1 registration is under suspension, and while acting as such member, officer,
2 director, associate, qualifying manager, or responsible managing employee had
3 knowledge of or participated in any of the prohibited acts for which the license or
4 registration was denied, suspended or revoked, shall be prohibited from serving as
5 an officer, director, associate, partner, qualifying manager, or responsible
6 managing employee of a registered company, and the employment, election or
7 association of such person by a registered company is a ground for disciplinary
8 action.

9 STATUTORY AND REGULATORY PROVISIONS

10 (Statutory Provisions)

11 9. Code section 8516 states, in pertinent part:

12

13 (b) No registered company or licensee shall commence work on a contract,
14 or sign, issue, or deliver any documents expressing an opinion or statement relating
15 to the absence or presence of wood destroying pests or organisms until an
16 inspection has been made by a licensed Branch 3 field representative or operator.
17 The address of each property inspected or upon which work is completed shall be
18 reported on a form prescribed by the board and shall
19 be filed with the board no later than 10 business days after the commencement of
20 an inspection or upon completed work.

21 Every property inspected pursuant to this subdivision or Section 8518 shall
22 be assessed a filing fee pursuant to Section 8674.

23 Failure of a registered company to report and file with the board the address
24 of any property inspected or work completed pursuant to Section 8518 or this
25 section is grounds for disciplinary action and shall subject the registered company
26 to a fine of not more than two thousand five hundred dollars (\$2,500).

27 A written inspection report conforming to this section and a form approved
28 by the board shall be prepared and delivered to the person requesting the inspection
or to the person's designated agent within 10 business days of the inspection,
except that an inspection report prepared for use by an attorney for litigation
purposes is not required to be reported to the board. The report shall be delivered
before work is commenced on any property. The registered company shall retain
for three years all original inspection reports, field notes, and activity forms.

Reports shall be made available for inspection and reproduction to the
executive officer of the board or his or her duly authorized representative during
business hours. Original inspection reports or copies thereof shall be submitted to the
board upon request within two business days. The following shall be set forth in the
report:

(1) The date of the inspection and the name of the licensed field
representative or operator making the inspection.

(2) The name and address of the person or firm ordering the report.

(3) The name and address of any person who is a party in interest

1 (4) The address or location of the property.

2 (5) A general description of the building or premises inspected.

3 (6) A foundation diagram or sketch of the structure or structures or
4 portions of the structure or structures inspected, indicating thereon the approximate
5 location of any infested or infected areas evident, and the parts of the structure
6 where conditions that would ordinarily subject those parts to attack by wood
7 destroying pests or organisms exist.

8 (7) Information regarding the substructure, foundation walls and footings,
9 porches, patios and steps, air vents, abutments, attic spaces, roof framing that
10 includes the eaves, rafters, fascias, exposed timbers, exposed sheathing, ceiling
11 joists, and attic walls, or other parts subject to attack by wood destroying pests or
12 organisms. Conditions usually deemed likely to lead to infestation or infection,
13 such as earth-wood contacts, excessive cellulose debris, faulty grade levels, excessive
14 moisture conditions, evidence of roof leaks, and insufficient ventilation are to be
15 reported.

16
17 (10) Recommendations for corrective measures . . .

18 10. Code section 8622 states:

19 When a complaint is accepted for investigation of a registered company, the
20 board, through an authorized representative, may inspect any or all properties on
21 which a report has been issued pursuant to Section 8516 or a notice of completion
22 has been issued pursuant to Section 8518 by the registered company to determine
23 compliance with the provisions of this chapter and the rules and regulations issued
24 thereunder. If the board determines the property or properties are not in
25 compliance, a notice shall be sent to the registered company so stating. The
26 registered company shall have 30 days from the receipt of the notice to bring such
27 property into compliance, and it shall submit a new original report or completion
28 notice or both and an inspection fee of not more than one hundred twenty-five
dollars (\$125) for each property inspected. If a subsequent reinspection is
necessary, pursuant to the board's review of the new original report or notice or
both, a commensurate reinspection fee shall also be charged. If the board's
authorized representative makes no determination or determines the property is in
compliance, no inspection fee shall be charged . . .

11. Code section 8641 states:

Failure to comply with the provisions of this chapter, or any rule or
regulation adopted by the board, or the furnishing of a report of inspection without
the making of a bona fide inspection of the premises for wood-destroying pests or
organisms, or furnishing a notice of work completed prior to the completion of the
work specified in the contract, is a ground for disciplinary action.

12. Code section 8642 states that "[t]he commission of any grossly negligent or
fraudulent act by the licensee as a pest control operator, field representative, or applicator
or by a registered company is a ground for disciplinary action."

13. Code section 8644 states:

1 Fraud or misrepresentation, after inspection, by any licensee or registered
2 company engaged in pest control work of any infestation or infection of
3 wood-destroying pests or organisms found in property or structures, or respecting
4 any conditions of the structure that would ordinarily subject structures to attack by
5 wood-destroying pests or organisms, whether or not a report was made pursuant to
6 Sections 8516 and 8517 of this code, is a ground for disciplinary action.

7 14. Code section 8652 states:

8 Failure of a registered company to make and keep all inspection reports,
9 field notes contracts, documents, notices of work completed, and records, other
10 than financial records, for a period of not less than three years after completion of
11 any work or operation for the control of structural pests or organisms, is a ground
12 for disciplinary action. These records shall be made available to the executive
13 officer of the board or his or her duly authorized representative during business
14 hours.

15 **(Regulatory Provisions)**

16 15 California Code of Regulations, title 16, section ("Regulation") 1937.14
17 states:

18 All work completed by licensees or registered companies shall be done
19 within the specific requirements of any plans or specifications and shall meet
20 accepted trade standards for good and workmanlike construction in any material
21 respect, and shall comply with provisions of Section 2516(c)(1), (2), (4) and (6) of
22 Title 24, California Code of Regulations.

23 16. Regulation 1990 states, in pertinent part:

24 (a) All reports shall be completed as prescribed by the board. Copies filed
25 with the board shall be clear and legible. All reports must supply the information
26 required by Section 8516 of the Code and the information regarding the pesticide
27 or pesticides used as set forth in Section 8538 of the Code, and shall contain or
28 describe the following:

(1) Structural pest control license number of the person making the inspection.

(2) Signature of the Branch 3 licensee who made the inspection.

(3) Infestations, infections or evidence thereof.

(4) Wood members found to be damaged by wood destroying pests or
organisms.

....

(b) Conditions usually deemed likely to lead to infestation or infection
include, but are not limited to:

(1) Faulty Grade Level. A faulty grade level exists when the top of any
foundation is even with or below the adjacent earth. The existing earth level shall
be considered grade.

....

1 (3) Excessive Cellulose Debris. This is defined as any cellulose debris of a
2 size that can be raked or larger. Stumps and wood imbedded in footings in earth
3 contact shall be reported.

4

5 (5) Commonly controllable moisture conditions which would foster the
6 growth of a fungus infection materially damaging to woodwork ...

7 17. Regulation 1991 states, in pertinent part:

8 (a) Recommendations for corrective measures for the conditions found
9 shall be made as required by paragraph 9 of subdivision (b) of Section 8516 of the
10 code and shall also conform with the provisions of Title 24 of the California Code
11 of Regulations and any other applicable local building code, and shall accomplish
12 the following:

13

14 (5) Structural members which appear to be structurally weakened by
15 wood-destroying pests to the point where they no longer serve their intended
16 purpose shall be replaced or reinforced. Structural members which are structurally
17 weakened by fungus to the point where they no longer serve their intended purpose
18 shall be removed or, if feasible, may remain in place if another structural member
19 is installed adjacent to it to perform the same function, if both members are dry
20 (below 20% moisture content), and if the excessive moisture condition responsible
21 for the fungus damage is corrected. Structural members which appear to have only
22 surface fungus damage may be chemically treated and/or left as is if, in the opinion
23 of the inspector, the structural member will continue to perform its originally
24 intended function and if correcting the excessive moisture condition will stop the
25 further expansion of the fungus.

17 18. Regulation 1993 states, in pertinent part:

18 All of the following reports must be in compliance with the requirements of
19 Section 8516 of the code. All reports must be on the form prescribed by the board
20 and filed with the board with stamps affixed.

21

22 (d) A supplemental report is the report on the inspection performed on
23 inaccessible areas that have been made accessible as recommended on a previous
24 report. Such report shall indicate the absence or presence of wood-destroying pests
25 or organisms or conditions conducive thereto. This report can also be used to
26 correct, add, or modify information in a previous report. A licensed operator or
27 field representative shall refer to the original report in such a manner to identify it
28 clearly ...

Cost Recovery

26 19. Code section 125.3 states, in pertinent part, that a Board may request the
27 administrative law judge to direct a licensee found to have committed a violation or violations
28

1 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 **FACTUAL BACKGROUND**

4 20. Between May 2004 and December 2005, Respondents Y 2 K and Nancy
5 Walker perpetuated fraudulent acts against consumers by soliciting inspections in that they
6 contacted Mission Grove Realty Company and fraudulently requested access to a number of
7 properties without the homeowner, broker, or any other authorized individual having knowledge
8 of such requests. These solicitations were made under the guise of needing to perform the
9 "requested work." These solicitations occurred despite the fact that no work was authorized.

10
11 21. Respondents persisted in contacting Mission Grove Realty for over eight months
12 despite the company requesting them to stop solicitation of its agents.

13 22. On October 26, 2005, the Board received a formal complaint from Megan Ednar, a
14 listing agent for homeowners residing at 29542 Silver Buckle Court, Highland, CA. Ednar alleged
15 harassment by Respondents, between August 17, 2005 and October 26, 2005, in that they were
16 requesting payment for work that neither she nor the homeowners authorized them to perform and
17 threatening her with a lawsuit if they did not receive payment.

18 23. On March 13, 2006, Board Specialist Steven Smith visited the business office of
19 Respondents. He observed that the original field sheet and Notice of Work Completed and Not
20 Completed were missing. Pursuant to Business and Professions Code sections 8516 and 8562, the
21 registered company is required to retain these records for three years.

22
23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Fraudulent or Deceptive Practices)**

25 24. Respondents Y 2 K and Nancy Walker are subject to disciplinary action
26 pursuant to Code section 8642 in that between May 2004 and December 2005, Respondents
27 engaged in fraudulent or deceptive practices as detailed in paragraphs 20 through 22 above.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud or Misrepresentation (Post-Inspection))**

3 25. Respondents Y 2 K and Nancy Walker are subject to disciplinary action pursuant to Code
4 section 8644 in that between August 17, 2005 and October 26, 2005, they committed fraudulent
5 and/or misrepresentation acts as detailed in paragraph 22 above.

6
7
8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Failure to Maintain Records Relating to Structural Pest Control Activities)**

10 27. Respondents Y 2 K and Nancy Walker are subject to disciplinary action
11 pursuant to Code sections 8516 and 8652 in that they failed to keep all inspection records,
12 including inspection reports, field notes, contracts, documents, notices of work completed, and
13 related records, for a period of not less than three years after completion of work or operations for
14 the control of structural pests or organisms. On March 13, 2006, Board Specialist Steven Smith
15 visited the business office of Respondents. He observed that the original field sheet and Notice of
16 Work Completed and Not Completed were missing.

17 **OTHER MATTERS**

18 28. Code section 8620 provides, in pertinent part, that a respondent may
19 request that a civil penalty of not more than \$5,000 be assessed in lieu of an actual suspension of
20 1 to 19 days, or not more than \$10,000 for an actual suspension of 20 to 45 days. Such request
21 must be made at the time of the hearing and must be noted in the proposed decision. The
22 proposed decision shall not provide that a civil penalty shall be imposed in lieu of a suspension.

23 29. Pursuant to Code section 8624, the causes for discipline established as to
24 Respondent Y 2 K Exterminating likewise constitute causes for discipline against Nancy Ann
25 Walker regardless of whether Nancy Ann Walker had knowledge of or participated in the acts or
26 omissions which constitute causes for discipline against Respondent Y 2 K Exterminating.

27 30. Pursuant to Code section 8624, if Operator's License Number OPR 10501,
28 issued to Nancy Ann Walker, is suspended or revoked, the Board may suspend or revoke

1 Company Registration Certificate Number PR 4287 issued to Y 2 K Exterminating, with Nancy
2 Ann Walker as Qualifying Manager.

3 31. Pursuant to Code section 8624, if Operator's License Number OPR 10501,
4 issued to Nancy Ann Walker, is suspended or revoked, the Board may suspend or revoke Branch
5 Office Registration Number BR 4945, issued to Y 2 K Exterminating with Nancy Ann Walker as
6 branch office supervisor.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein
9 alleged, and that following the hearing, the Structural Pest Control Board issue a decision:

10 1. Revoking or suspending Company Registration Certificate Number
11 PR 4287, issued to Y 2 K Exterminating;


12 2. Revoking or suspending Branch Office Registration Number BR 4945,
13 issued to Y 2 K Exterminating;

14 3. Revoking or suspending Operator's License Number OPR 10501, issued to
15 Nancy Ann Walker;

16 4. Ordering Respondents Y 2 K Exterminating and Nancy Ann Walker, to pay
17 the Structural Pest Control Board the reasonable costs of the investigation and enforcement of this
18 case, pursuant to Business and Professions Code section 125.3;

19 5. Taking such other and further action as deemed necessary and proper.

20
21 DATED: 10-20-06

22
23 
24 KELLI OKUMA
25 Registrar
26 Structural Pest Control Board
27 Department of Consumer Affairs
28 State of California

Complainant

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Attorneys for Complainant

BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 2007-18

Y 2 K EXTERMINATING

Rodrigo Lopez, a.k.a. Rigo Lopez, Owner
(Unlicensed)

Nancy Ann Walker, Qualifying Manager
2021 Troy Avenue
South El Monte, CA 91733

Company Registration Certificate No. PR 4287,

Y 2 K EXTERMINATING

Nancy Ann Walker, Branch Office Supervisor
7974 Haven Avenue, Suite 180
Rancho Cucamonga, CA 91730
Branch Office Registration No. BR 4945,

NANCY ANN WALKER

2021 Troy Avenue
South El Monte, CA 91733
Operator's License No. OPR 10501,

EDWARD ANDREW AVILEZ, JR.

2021 Troy Avenue
South El Monte, CA 91733
Field Representative's License No. FR 34165,

and

VICTOR R. ORTEGA

1077 Park Avenue, Suite 5
Long Beach, CA 90804
Field Representative's License No. FR35249

Respondents.

ACCUSATION

1 Complainant alleges:

2 **PARTIES**

3 1. Kelli Okuma ("Complainant") brings this Accusation solely in her official
4 capacity as the Registrar of the Structural Pest Control Board ("Board"), Department of
5 Consumer Affairs.

6 **Y 2 K Exterminating**
7 **Company Registration Certificate No. PR 4287**

8 2. On or about March 25, 2003, the Board issued Company Registration
9 Certificate Number PR 4287 in Branch 3 (termite) to Y 2 K Exterminating ("Respondent
10 Y 2 K"), with Rodrigo Lopez, also known as Rigo Lopez ("Lopez"), as owner and Nancy Ann
11 Walker ("Respondent Walker"), as qualifying manager. On October 18, 2005, Respondent Y 2
12 K paid a fine of \$503 levied by the Board for said Respondent's violation of Business and
13 Professions Code ("Code") section 8516, subdivision (b).

14 **Y 2 K Exterminating**
15 **Branch Office Registration No. BR 4945**

16 3. On or about September 15, 2003, the Board issued Branch Office
17 Registration Number BR 4945 to Respondent Y 2 K with Respondent Walker as branch office
18 supervisor.

19 **Nancy Ann Walker**
20 **Operator's License No. OPR 10501**

21 4. On or about November 20, 2001, the Board issued Operator's License
22 Number OPR 10501 in Branch 3 to Respondent Walker, employee of Gallatin Exterminators,
23 Inc. ("Gallatin"). Respondent left the employ of Gallatin on February 11, 2003. On March 25,
24 2003, Respondent became the qualifying manager for Respondent Y 2 K. On September 15,
25 2003, Respondent became the branch office supervisor for Respondent Y 2 K. Respondent's
26 operator's license will expire on June 30, 2007, unless renewed.

27 ///

28 ///

1 **Edward Andrew Avilez, Jr.**
2 **Field Representative's License No. FR 34165**

3 5. On or about January 16, 2002, the Board issued Field Representative's
4 License Number FR 34165 in Branch 3 to Edward Andrew Avilez, Jr. ("Respondent Avilez"),
5 employee of Tri-Ace Termite & Pest Control ("Tri-Ace"). Respondent left the employ of Tri-
6 Ace on September 20, 2002. On January 15, 2005, Respondent became employed by
7 Respondent Y 2 K. Respondent's field representative's license will expire on June 30, 2007,
8 unless renewed.

9 **Victor R. Ortega**
10 **Field Representative's License No. FR35249**

11 6. On or about October 24, 2002, the Board issued Field Representative's
12 License No. FR35249 to Victor R. Ortega ("Respondent Ortega"), employee of Dewey Pest
13 Control. Respondent's Field Representative License reflected employment with Y 2 K
14 Exterminating and Dewey Pest Control on September 21, 2003. On June 16, 2005,
15 Respondent's license was placed on inactive status. On June 20, 2006, Respondent's license was
16 levied a \$1500.00 fine by the Structural Pest Control Board for violation of section 8644 of the
17 Business and Professions Code. Respondent's Field Representative license is currently inactive
18 will expire on June 30, 2008, unless renewed.

19
20 **JURISDICTION**

21 7. Code section 8620 provides, in pertinent part, that the Board may suspend
22 or revoke a license when it finds that the holder, while a licensee or applicant, has committed any
23 acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a
24 civil penalty.

25 8. Code section 8624 states:

26 If the board suspends or revokes an operator's license and one or more branch
27 offices are registered under the name of the operator, the suspension or revocation may be
28 applied to each branch office.

 If the operator is the qualifying manager, a partner, responsible officer, or
owner of a registered structural pest control company, the suspension or

1 revocation may be applied to the company registration.

2 The performance by any partnership, corporation, firm, association, or
3 registered company of any act or omission constituting a cause for disciplinary
4 action, likewise constitutes a cause for disciplinary action against any licensee
5 who, at the time the act or omission occurred, was the qualifying manager, a
6 partner, responsible officer, or owner of the partnership, corporation, firm,
7 association, or registered company whether or not he or she had knowledge of, or
8 participated in, the prohibited act or omission.

9 9. Code section 8625 states:

10 The lapsing or suspension of a license or company registration by
11 operation of law or by order or decision of the board or a court of law, or the
12 voluntary surrender of a license or company registration shall not deprive the
13 board of jurisdiction to proceed with any investigation of or action or disciplinary
14 proceeding against such licensee or company, or to render a decision suspending
15 or revoking such license or registration.

16 10. Code section 8654 states:

17 Any individual who has been denied a license for any of the reasons
18 specified in Section 8568, or who has had his or her license revoked, or whose
19 license is under suspension, or who has failed to renew his or her license while it
20 was under suspension, or who has been a member, officer, director, associate,
21 qualifying manager, or responsible managing employee of any partnership,
22 corporation, firm, or association whose application for a company registration has
23 been denied for any of the reasons specified in Section 8568, or whose company
24 registration has been revoked as a result of disciplinary action, or whose company
25 registration is under suspension, and while acting as such member, officer,
26 director, associate, qualifying manager, or responsible managing employee had
27 knowledge of or participated in any of the prohibited acts for which the license or
28 registration was denied, suspended or revoked, shall be prohibited from serving as
an officer, director, associate, partner, qualifying manager, or responsible
managing employee of a registered company, and the employment, election or
association of such person by a registered company is a ground for disciplinary
action.

29 STATUTORY AND REGULATORY PROVISIONS

30 (Statutory Provisions)

31 11. Code section 8516 states, in pertinent part:

32

33 (b) No registered company or licensee shall commence work on a
34 contract, or sign, issue, or deliver any documents expressing an opinion or
35 statement relating to the absence or presence of wood destroying pests or
36 organisms until an inspection has been made by a licensed Branch 3 field
37 representative or operator. The address of each property inspected or upon which
38 work is completed shall be reported on a form prescribed by the board and shall
be filed with the board no later than 10 business days after the commencement of
an inspection or upon completed work.

1 Every property inspected pursuant to this subdivision or Section 8518
2 shall be assessed a filing fee pursuant to Section 8674.

3 Failure of a registered company to report and file with the board the
4 address of any property inspected or work completed pursuant to Section 8518 or
5 this section is grounds for disciplinary action and shall subject the registered
6 company to a fine of not more than two thousand five hundred dollars (\$2,500).

7 A written inspection report conforming to this section and a form
8 approved by the board shall be prepared and delivered to the person requesting the
9 inspection or to the person's designated agent within 10 business days of the
10 inspection, except that an inspection report prepared for use by an attorney for
11 litigation purposes is not required to be reported to the board. The report shall be
12 delivered before work is commenced on any property. The registered company
13 shall retain for three years all original inspection reports, field notes, and activity
14 forms.

15 Reports shall be made available for inspection and reproduction to the
16 executive officer of the board or his or her duly authorized representative during
17 business hours. Original inspection reports or copies thereof shall be submitted to
18 the board upon request within two business days.

19 The following shall be set forth in the report:

20

21 2) The name and address of the person or firm ordering the report.

22 3) The name and address of any person who is a party in interest.

23

24 6) A foundation diagram or sketch of the structure or structures or portions
25 of the structure or structures inspected, indicating thereon the approximate
26 location of any infested or infected areas evident, and the parts of the structure
27 where conditions that would ordinarily subject those parts to attack by wood
28 destroying pests or organisms exists.

7) Information regarding the substructure, foundation walls and footings,
porches, patios and steps, air vents, abutments, attic spaces, roof framing that
includes the eaves, rafters, fascias, exposed timbers, exposed sheathing, ceiling
joists, and attic walls or other parts subject to attack by wood destroying pests or
organisms. Conditions usually deemed likely to lead to infestation, such as earth-
wood contacts, excessive cellulose debris, faulty grade levels, excessive moisture
conditions, evidence of roof leaks, and insufficient ventilation are to be reported.

10

11 10) Recommendations for corrective measures.

12 12. Code section 8518 states, in pertinent part:

When a registered company completes work under a contract, it

1 shall prepare, on a form prescribed by the board, a notice of work completed and
2 not completed, and shall furnish that notice to the owner of the property or the
3 owner's agent within 10 working days after completing the work. The notice
4 shall include a statement of the cost of the completed work and estimated cost of
5 work not completed. The address of each property inspected or upon which work
6 was completed shall be reported on a form prescribed by the board and shall be
7 filed with the board no later than 10 working days after completed work. Every
8 property upon which work is completed shall be assessed a filing fee pursuant to
9 Section 8674. Failure of a registered company to report and file with the board
10 the address of any property upon which work was completed pursuant to
11 subdivision (b) of Section 8516, subdivision (b) of Section 8516.1, or Section
12 8518 are grounds for disciplinary action and shall subject the registered company
13 to a fine or not more than two thousand five hundred dollars (\$2,500). The
14 registered company shall retain for three years all original notices of work
15 completed, work not completed and activity forms. Notices of work completed
16 and not completed shall be made available for inspection and reproduction to the
17 executive during business hours. Original notices of work completed or not
18 completed or copies thereof shall be submitted to the board upon request within
19 two business days.

11 13. Code section 8622 states:

12 When a complaint is accepted for investigation of a registered company,
13 the board, through an authorized representative, may inspect any or all property on
14 which a report has been issued pursuant to Section 8516 or a notice of completion
15 has been issued pursuant to Section 8518 by the registered company to determine
16 compliance with the provisions of this chapter and the rules and regulations issued
17 thereunder. If the board determines the property or properties are not in
18 compliance, a notice shall be sent to the registered company so stating. The
19 registered company shall 30 days from the receipt of the notice to bring such
20 property into compliance, and it shall submit a new original report or completion
21 notice or both and an inspection fee of not more than one hundred twenty-five
22 dollars (\$125) for each property inspected. If a subsequent reinspection is
23 necessary, pursuant to the board's review of the new original report or notice or
24 both, a commensurate reinspection fee shall also be charged. If the board's
25 authorized representative makes no determination or determines the property is in
26 compliance, no inspection fee shall be charged.

20 The notice sent to the registered company shall inform the registered
21 company that if it desires a hearing to contest the finding of noncompliance, the
22 hearing shall be requested by written notice to the board within 20 days of receipt
23 of the notice of noncompliance from the board. Where a hearing is not requested
24 pursuant to this section, payment of any assessment shall not constitute an
25 admission of any noncompliance charged.

24 14. Code section 8638 states:

25 Failure on the part of a registered company to complete any operation or
26 construction repairs for the price stated in the contract for such operation or
27 construction repairs or in any modification of such contract is a ground for
28 disciplinary action.

27 15. Code section 8641 states:

28 Failure to comply with the provisions of this chapter, or any rule or

1 regulation adopted by the board, or the furnishing of a report of inspection without
2 the making of a bona fide inspection of the premises for wood-destroying pests or
3 organisms, or furnishing a notice of work completed prior to the completion of the
4 work specified in the contract, is a ground for disciplinary action.

5 16. Code section 8644 states:

6 Fraud or misrepresentation, after inspection, by any licensee or registered
7 company engaged in pest control work of any infestation or infection of wood-
8 destroying pests or organisms found in property or structures, or respecting any
9 conditions of the structure that would ordinarily subject structures to attack by
10 wood-destroying pests or organisms, whether or not a report was made . . . is a
11 ground for disciplinary action.

12 (Regulatory Provisions)

13 17. California Code of Regulations, title 16, section ("Regulation") 1937.14
14 states:

15 All work completed by licensees or registered companies shall be done
16 within the specific requirements of any plans or specifications and shall meet
17 accepted trade standards for good and workmanlike construction in any material
18 respect, and shall comply with provisions of Section 2516(c)(1), (2), (4) and (6) of
19 Title 24, California Code of Regulations.

20 18. Regulation 1990 states, in pertinent part:

21 (a) All reports shall be completed as prescribed by the board. Copies filed
22 with the board shall be clear and legible. All reports must supply the information
23 required by Section 8516 of the Code and the information regarding the pesticide
24 or pesticides used as set forth in Section 8538 of the Code, and shall contain or
25 describe the following:

26

27 (3) Infestations, infections or evidence thereof.

28 (4) Wood members found to be damaged by wood destroying pests or organisms.

29

30 (b) Conditions usually deemed likely to lead to infestation or infection
31 include, but are not limited to:

32

33 (4) Earth-wood contacts.

34 (5) Commonly controllable moisture conditions which would foster the
35 growth of a fungus infection materially damaging to woodwork .

36 (e) Information regarding all accessible areas of the structure including but not

1 limited to the substructure, foundation walls and footings, porches, patios and steps, stairways,
2 air vents, abutments, stucco walls, columns, attached structures or other parts of a structure
normally subject to attack by wood-destroying pests or organisms. . . .

3 19. Regulation 1991 states, in pertinent part:

4 (a) Recommendations for corrective measures for the conditions found
5 shall be made as required by paragraph 9 of subdivision (b) of Section 8516 of the
6 code and shall also conform with the provisions of Title 24 of the California Code
of Regulations and any other applicable local building code, and shall accomplish
the following:

7

8 (5) Structural members which appear to be structurally weakened by
9 wood-destroying pests to the point where they no longer serve their intended
purpose shall be replaced or reinforced. Structural members which are structurally
10 weakened by fungus to the point where they no longer serve their intended
purpose shall be removed or, if feasible, may remain in place if another structural
11 member is installed adjacent to it to perform the same function, if both members
are dry (below 20% moisture content), and if the excessive moisture condition
12 responsible for the fungus damage is corrected. Structural members which appear
to have only surface fungus damage may be chemically treated and/or left as is if,
13 in the opinion of the inspector, the structural member will continue to perform its
originally intended function and if correcting the excessive moisture condition
will stop the further expansion of the fungus.

14

15 (8) Exterminate all reported wood-destroying pests. Such extermination shall not
16 be considered repair under Section 8516(b)(12) of the code. If evidence indicates that wood-
destroying pests extend into an inaccessible area(s), recommendations shall be made to either:

17 (A) Enclose the structure for an all encompassing treatment utilizing materials
18 listed in Section 8505.1 of the code, or

19 (B) use another all encompassing method of treatment which exterminates the
infestation of the structure, or

20 (C) locally treat by any or all of the following:

21 1. exposing the infested area(s) for local treatment,

2. removing the infested wood,

22 3. using another method of treatment which exterminates the infestation.

23 When a complete inspection is performed, a recommendation shall be made to
remove or cover all accessible pellets and frass of wood-destroying pests.

24 When a limited inspection is performed, the inspection report shall state that the
inspection is limited to the area(s) described and diagrammed. A recommendation shall be made
25 to remove or cover all accessible pellets and frass of wood-destroying pests in the limited areas.
The limited inspection report shall include a recommendation for further inspection of the entire
26 structure and that all accessible evidence of wood-destroying pests be removed or covered.

27 20. Regulation 1993 states, in pertinent part:

28 All of the following reports must be in compliance with the requirements

1 of Section 8516 of the code. All reports must be on the form prescribed by the
2 board and filed with the board with stamps affixed.

3

4 (c) A limited report is the report on only part of a structure. Such a report shall
5 have a diagram of the area inspected and shall specifically indicate which portions of the
6 structure were inspected with recommendation for further inspection of the entire
7 structure and the name of the person or agency requesting a limited report.

8 (d) A supplemental report is the report on the inspection performed on
9 inaccessible areas that have been made accessible as recommended on a previous
10 report. Such report shall indicate the absence or presence of wood-destroying
11 pests or organisms or conditions conducive thereto. This report can also be used to
12 correct, add, or modify information in a previous report. A licensed operator or
13 field representative shall refer to the original report in such a manner to identify it
14 clearly.

15 Cost Recovery

16 21. Code section 125.3 states, in pertinent part, that a Board may request the
17 administrative law judge to direct a licensee found to have committed a violation or violations
18 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
19 enforcement of the case.

20 FACTUAL BACKGROUND

21 22. On August 4, 2004, through January 4, 2006, Respondent Y2 K
22 performed Wood Destroying Organisms Inspections ("WDO") at the subject property located at
23 123 E. Via Vaquero, San Dimas, CA 91773.

24 23. On August 4, 2004, Respondent Victor Ortega, a field representative,
25 performed the inspection and prepared the inspection report at the subject property. The
26 inspection report made findings of the following: evidence of drywood termites at the deck/patio
27 joists and wood members, evidence of decay fungi damage at deck/patio wood members,
28 evidence of drywood termites and damage at the exterior trims, roof sheathing, window trims and
studs, and decay fungi damage at the exterior trims, roof sheathing, window trims and blocking,
and evidence of earth-to-wood contact at the exterior trims and siding. The inspection report
made recommendations to chemically treat the visible and accessible drywood termite
infestations, to remove and/or cover accessible termite pellets, to repair, replace and/or reinforce,

1 or fill the drywood termite and to lower the soil to correct the earth-to-wood contact. On the
2 inspection report, Respondent failed to make proper findings regarding the excessive moisture
3 condition at the living room and hallways responsible for the reported infections. The inspection
4 report failed to include the address of the individual or firm ordering the required information
5 such as the name or address of property owner/party of interest and the address where the report
6 is to be sent.

7 On September 24, 2005, November 19, 2005, December 1, 2005, and January 4,
8 2006, Respondent Edward Avilez, a field representative, performed inspections and prepared the
9 inspection reports at the subject property. The inspection reports failed to make findings of the
10 following: evidence of drywood termites and damage, evidence of decay fungi and damage and
11 evidence of earth-to-wood contact. The inspection report made recommendations to chemically
12 treat the visible and accessible drywood termite infestations, to remove and/or cover accessible
13 termite pellets, to repair, replace and/or reinforce, The inspection reports failed to include
14 accurate information regarding the attic, decking, accessibility and other features.

15 On the inspection reports, Respondent failed to make proper findings regarding the
16 excessive moisture condition at the living room and hallways responsible for the reported
17 infections. The reports also indicated that there was no deck; however, the subject property
18 contains an attached wood deck at the rear. The inspection reports also failed to include the
19 address of the individual or firm ordering the required information such as the name or address of
20 property owner/party of interest and the address where the report is to be sent.

21 24. On October 8, 2004, Respondent Y2K issued a standard notice of work
22 completed and not completed (Completion Notice) on the subject address. The Completion
23 Notice certified that all Respondent Ortega's recommendations but one, involving exterior earth-
24 wood contact, had been completed and failed to include the address of the individual or firm
25 ordering the required information such as the name or address of property owner/party of interest
26 and the address where the report is to be sent. The Completion Notice also stated the subject
27 address was now free of evidence of active infestation or infection in the visible and accessible
28 areas.

1 25. On June 7, 2005, after escrow closed on the subject address, the
2 homeowner, Margo Boss, requested that another structural pest control company, Speed Pro,
3 inspect the subject address. After reviewing the inspection report wherein Speed Pro made a
4 number of findings including earth-to-wood contact at the exterior and recommendations
5 including fumigation of the structure for drywood termites, the homeowner became aware that,
6 among other things, Respondents failed to complete the necessary work prior to the close of
7 escrow.

8 26. On September 16, 2005, the Board received a complaint from the
9 homeowner which alleged that Respondents failed to properly report conditions related to
10 structural pest control, failed to make proper recommendations for corrective measures and failed
11 to properly complete the necessary work prior to the close of escrow. After the complaint was
12 filed and the Board issued their Report of Findings, Respondent Y2K took over six months to
13 bring the subject address into compliance, issuing five different Completion Notices, four of
14 which certified that the work had been completed, when in fact it had not been. Furthermore,
15 Respondent Y2K failed to file all of the required documentation regarding WDO activities at the
16 subject address.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Failure to Properly Prepare Inspection Report and Make Recommendations For**
19 **Corrective Measures)**

20 27. Respondents Y 2 K, Walker, Avilez, and Ortega are subject to disciplinary
21 action pursuant to Code section 8516 and Regulation 1990 in that from August 4, 2004, through
22 January 4, 2006, they failed to prepare proper inspection reports as follows:

23 A. The inspection reports made the following findings: evidence of drywood
24 termites at the deck/patio joists and wood members, evidence of decay fungi damage at
25 deck/patio wood members, evidence of drywood termites and damage at the exterior trims, roof
26 sheathing, window trims and studs, and decay fungi damage at the exterior trims, roof sheathing,
27 window trims and blocking, and evidence of earth-to-wood contact at the exterior trims and
28 siding. Evidence indicated that the infestation extended into the subject property's inaccessible

1 areas, including the attic, but no such findings were noted and none of the inspection reports even
2 noted the presence of the attached rear deck or inaccessible areas, such as the attic. On the
3 inspection reports, Respondents failed to make proper findings regarding the excessive moisture
4 condition at the living room and hallways responsible for the reported infections.

5
6 B. Respondents are subject to disciplinary action pursuant to Code section
7 8516(b)(10) in that from in and around August 4, 2004 through January 4, 2006, they failed to
8 recommend proper corrective measures relating to findings in the inspection reports as follows:

9 The inspection reports made recommendations to chemically treat the visible and
10 accessible drywood termite infestations, to remove and/or cover accessible termite pellets, to
11 repair, replace and/or reinforce, or fill the drywood termite and to lower the soil to correct the
12 earth-to-wood contact. On the inspection reports, Respondents failed to make proper
13 recommendations for corrective measures regarding the excessive moisture condition at the
14 living room and hallways responsible for the reported infections. Evidence indicated that the
15 termite infestation extended into the subject property's inaccessible areas, including the attic, but
16 none of the inspection reports of the subject property contained recommendations for corrective
17 measures or even noted the presence of the attached rear deck or inaccessible areas, such as the
18 attic.

19 C. Respondents are subject to disciplinary action pursuant to Code section 8516
20 (b) in that they failed to file with the Board all of the WDO activities involving the incident
21 address no later than ten business days after the commencement of an inspection or upon
22 completed work. Completion Notices for October 8, 2004, January 19, 2006, February 25, 2006
23 and May 11, 2006, were not filed with the Board.

24 D. Respondents are subject to disciplinary action pursuant to Code section
25 8516(b)(2)(3), in that all of the inspection reports regarding the subject property failed to include
26 required information such as the name and address of the person or firm requesting the report, the
27 name and address of any person who is a party in interest and the address where the report is to
28 be sent.

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SECOND CAUSE FOR DISCIPLINE

(Failure to Properly Complete Repairs)

28. Respondents Y 2 K, Walker, Avilez, and Ortega are subject to disciplinary action pursuant to Code section 8638 in that on approximately October 4, 2004, through January 4, 2006:

Respondents failed to properly complete repairs by their failure to exterminate the drywood termite infestations and decay fungi damage and satisfactorily complete related repairs which were certified as having been completed and exterminated on the October 8, 2004, November 19, 2005, December 1, 2005, January 19, 2006, January 25, 2006, February 26, 2006, and May 11, 2006 Completion Notices. At the siding and eaves, the roof sheathing was not properly sanded and painted and at the wood deck, the prime coat was still visible on the eaves and latticework. At present, the reported drywood termite infestation, decay fungi and related damage remains at the subject property.

THIRD CAUSE FOR DISCIPLINE

(Failure to Prepare Proper Inspection Reports)

29 Respondents Y 2 K, Walker, Avilez, and Ortega are subject to disciplinary action pursuant to Regulation section 1993(d)(e) in that on or about October 4, 2004, through January 4, 2006, Respondents failed to properly prepare and deliver proper inspection reports regarding the subject property.

FOURTH CAUSE FOR DISCIPLINE

(Fraud)

30. Respondents Y2K and Walker are subject to disciplinary action pursuant to Code section 8644 in that from approximately October 8, 2004, through May 11, 2006, they committed fraudulent acts as follows:

In violation of Code section 8644, the October 8, 2004, January 19, 2006,

1 February 25, 2006, and May 11, 2006 Completion Notices all certified that the subject address
2 was free of active infestation or infection, when in fact such infestation and infection remain.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 **(Poor Workmanship)**

5 31. Respondents Y 2 K and Walker are subject to disciplinary action pursuant to
6 Code section 8641 in that they failed to comply with Regulation 1937.14 by failing to perform
7 the corrective repairs at the subject property in a good and workmanlike manner in the following
8 respects:

9 Failure to exterminate the drywood termite infestations and decay fungi damage and
10 make related repairs which were certified as having been completed and exterminated on the
11 October 8, 2004, January 19, 2006, February 25, 2006, and May 11, 2006 Completion Notices.
12 At the siding and eaves, the roof sheathing was not properly sanded and painted and at the wood
13 deck, the prime coat was still visible on the eaves and latticework. At present, the reported
14 drywood termite infestation, decay fungi and related damage remains at the subject property.

15
16 **SIXTH CAUSE FOR DISCIPLINE**

17 **(Failure to Comply with Board's Notice)**

18 32. Respondents Y 2 K and Walker are subject to discipline pursuant to Code
19 section 8641, in that as to the subject property, it failed to comply with Code section 8622.
20 Respondents failed to correct all of the items described in the November 4, 2005 Report of
21 Findings (ROF) within thirty calendar days of receipt of the Board's notice (received on
22 November 15, 2005.)

23
24 **SEVENTH CAUSE FOR DISCIPLINE**

25 **(Failure to Comply with Board Regulations)**

26 33 All Respondents are subject to disciplinary action pursuant to Code section
27 8641, in that they failed to comply with Code sections 8516, 8518, 8622, 8638, 8641, and 8644
28 and sections 1937.14, 1990, 1991, and 1993 of the California Code of Regulations, as set forth in

1 paragraph 1 through 32 above.

2 **OTHER MATTERS**

3 34. Pursuant to Code section 8624, the causes for discipline established as to
4 Respondent Y 2 K Exterminating likewise constitute causes for discipline against Nancy Ann
5 Walker regardless of whether Nancy Ann Walker had knowledge of or participated in the acts or
6 omissions which constitute causes for discipline against Respondent Y 2 K Exterminating.

7 35. Pursuant to Code section 8624, if Operator's License Number OPR 10501,
8 issued to Nancy Ann Walker, is suspended or revoked, the Board may suspend or revoke
9 Company Registration Certificate Number PR 4287 issued to Y 2 K Exterminating, with Nancy
10 Ann Walker as qualifying Manager.

11 36. Pursuant to Code section 8624, if Operator's License Number OPR 10501,
12 issued to Nancy Ann Walker, is suspended or revoked, the Board may suspend or revoke Branch
13 Office Registration Number BR 4945, issued to Y 2 K Exterminating with Nancy Ann Walker as
14 branch office supervisor.

15 ///

16 ///

17 ///

18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein
20 alleged, and that following the hearing, the Structural Pest Control Board issue a decision:

21 1. Revoking or suspending Company Registration Certificate Number
22 PR 4287, issued to Y 2 K Exterminating;

23 2. Revoking or suspending Branch Office Registration Number BR 4945,
24 issued to Y 2 K Exterminating;

25 3. Revoking or suspending Operator's License Number OPR 10501, issued to
26 Nancy Ann Walker;

27 4. Revoking or suspending Field Representative's License Number FR
28 34165, issued to Edward Andrew Avilez, Jr.;

1 5. Revoking or suspending Field Representative's License Number FR 35249
2 issued to Victor R. Ortega;

3 6. Ordering Respondents Y 2 K Exterminating, Nancy Ann Walker, Edward
4 Andrew Avilez, Jr., and/or Victor R. Ortega to pay the Structural Pest Control Board the
5 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
6 Professions Code section 125.3;

7 7. Taking such other and further action as deemed necessary and proper.

8 DATED: 9/13/06

Ch D (for)

KELLI OKUMA
Registrar
Structural Pest Control Board
Department of Consumer Affairs
State of California

Complainant

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7

8 **BEFORE THE**
STRUCTURAL PEST CONTROL BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2007-14

12 **Y 2 K EXTERMINATING**
Rodrigo Lopez, a.k.a. Rigo Lopez, Owner
13 (Unlicensed)
Nancy Ann Walker, Qualifying Manager
14 2021 Troy Avenue
South El Monte, CA 91733
15 Company Registration Certificate No. PR 4287,

ACCUSATION

16 **Y 2 K EXTERMINATING**
Nancy Ann Walker, Branch Office Supervisor
17 7974 Haven Avenue, Suite 180
Rancho Cucamonga, CA 91730
18 Branch Office Registration No. BR 4945,

19 **NANCY ANN WALKER**
2021 Troy Avenue
20 South El Monte, CA 91733
Operator's License No. OPR 10501,

21 **EDWARD ANDREW AVILEZ, JR.**
22 2021 Troy Avenue
South El Monte, CA 91733
23 Field Representative's License No. FR 34165,

24 and

25 **DALE EDWARD DAWLEY**
12190 Fineview Street
26 El Monte, CA 91733
Field Representative's License No. FR33978
27

28 Respondents.

1 Complainant alleges:

2 **PARTIES**

3 1. Kelli Okuma ("Complainant") brings this Accusation solely in her official
4 capacity as the Registrar of the Structural Pest Control Board ("Board"), Department of
5 Consumer Affairs.

6 **Y 2 K Exterminating**
7 **Company Registration Certificate No. PR 4287**

8 2. On or about March 25, 2003, the Board issued Company Registration
9 Certificate Number PR 4287 in Branch 3 (termite) to Y 2 K Exterminating ("Respondent
10 Y 2 K"), with Rodrigo Lopez, also known as Rigo Lopez ("Lopez"), as owner and Nancy Ann
11 Walker ("Respondent Walker"), as qualifying manager. On October 18, 2005, Respondent Y 2
12 K paid a fine of \$503 levied by the Board for said Respondent's violation of Business and
13 Professions Code ("Code") section 8516, subdivision (b).

14 **Y 2 K Exterminating**
15 **Branch Office Registration No. BR 4945**

16 3. On or about September 15, 2003, the Board issued Branch Office
17 Registration Number BR 4945 to Respondent Y 2 K with Respondent Walker as branch office
18 supervisor.

19 **Nancy Ann Walker**
20 **Operator's License No. OPR 10501**

21 4. On or about November 20, 2001, the Board issued Operator's License
22 Number OPR 10501 in Branch 3 to Respondent Walker, employee of Gallatin Exterminators,
23 Inc. ("Gallatin"). Respondent left the employ of Gallatin on February 11, 2003. On March 25,
24 2003, Respondent became the qualifying manager for Respondent Y 2 K. On September 15,
25 2003, Respondent became the branch office supervisor for Respondent Y 2 K. Respondent's
26 operator's license will expire on June 30, 2007, unless renewed.

27 ///

28 ///

Edward Andrew Avilez, Jr.
Field Representative's License No. FR 34165

5. On or about January 16, 2002, the Board issued Field Representative's License Number FR 34165 in Branch 3 to Edward Andrew Avilez, Jr. ("Respondent Avilez"), employee of Tri-Ace Termite & Pest Control ("Tri-Ace"). Respondent left the employ of Tri-Ace on September 20, 2002. On January 15, 2005, Respondent became employed by Respondent Y 2 K. Respondent's field representative's license will expire on June 30, 2007, unless renewed.

Dale Edward Dawley
Field Representative's License No. FR33978

6. On or about November 7, 2001, the Board issued Field Representative's License No. FR33978 to Dale Edward Dawley ("Respondent Dawley"), employee of Termite Masters, Inc., Respondent left the employ of Termite Masters on February 1, 2003. On April 15, 2003, Respondent became employed with No Nonsense Termite Company Inc., and left its employment on July 24, 2003. On August 25, 2004, Respondent became employed by Respondent Y2K. Respondent's Field Representative license will expire on June 30, 2007 unless renewed.

JURISDICTION

7. Code section 8620 provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the holder, while a licensee or applicant, has committed any acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a civil penalty.

8. Code section 8624 states:

If the board suspends or revokes an operator's license and one or more branch offices are registered under the name of the operator, the suspension or revocation may be applied to each branch office.

If the operator is the qualifying manager, a partner, responsible officer, or owner of a registered structural pest control company, the suspension or revocation may be applied to the company registration.

The performance by any partnership, corporation, firm, association, or registered company of any act or omission constituting a cause for disciplinary action, likewise constitutes a cause for disciplinary action against any licensee

1 who, at the time the act or omission occurred, was the qualifying manager, a
2 partner, responsible officer, or owner of the partnership, corporation, firm,
3 association, or registered company whether or not he or she had knowledge of, or
4 participated in, the prohibited act or omission.

5 9. Code section 8625 states:

6 The lapsing or suspension of a license or company registration by
7 operation of law or by order or decision of the board or a court of law, or the
8 voluntary surrender of a license or company registration shall not deprive the
9 board of jurisdiction to proceed with any investigation of or action or disciplinary
10 proceeding against such licensee or company, or to render a decision suspending
11 or revoking such license or registration.

12 10. Code section 8654 states:

13 Any individual who has been denied a license for any of the reasons
14 specified in Section 8568, or who has had his or her license revoked, or whose
15 license is under suspension, or who has failed to renew his or her license while it
16 was under suspension, or who has been a member, officer, director, associate,
17 qualifying manager, or responsible managing employee of any partnership,
18 corporation, firm, or association whose application for a company registration has
19 been denied for any of the reasons specified in Section 8568, or whose company
20 registration has been revoked as a result of disciplinary action, or whose company
21 registration is under suspension, and while acting as such member, officer,
22 director, associate, qualifying manager, or responsible managing employee had
23 knowledge of or participated in any of the prohibited acts for which the license or
24 registration was denied, suspended or revoked, shall be prohibited from serving as
25 an officer, director, associate, partner, qualifying manager, or responsible
26 managing employee of a registered company, and the employment, election or
27 association of such person by a registered company is a ground for disciplinary
28 action.

STATUTORY AND REGULATORY PROVISIONS

(Statutory Provisions)

11. Code section 8516 states, in pertinent part:

....

(b) No registered company or licensee shall commence work on a
contract, or sign, issue, or deliver any documents expressing an opinion or
statement relating to the absence or presence of wood destroying pests or
organisms until an inspection has been made by a licensed Branch 3 field
representative or operator. The address of each property inspected or upon which
work is completed shall be reported on a form prescribed by the board and shall
be filed with the board no later than 10 business days after the commencement of
an inspection or upon completed work.

Every property inspected pursuant to this subdivision or Section 8518
shall be assessed a filing fee pursuant to Section 8674.

1 Failure of a registered company to report and file with the board the
2 address of any property inspected or work completed pursuant to Section 8518 or
3 this section is grounds for disciplinary action and shall subject the registered
4 company to a fine of not more than two thousand five hundred dollars (\$2,500).

5 A written inspection report conforming to this section and a form
6 approved by the board shall be prepared and delivered to the person requesting the
7 inspection or to the person's designated agent within 10 business days of the
8 inspection, except that an inspection report prepared for use by an attorney for
9 litigation purposes is not required to be reported to the board. The report shall be
10 delivered before work is commenced on any property. The registered company
11 shall retain for three years all original inspection reports, field notes, and activity
12 forms.

13 Reports shall be made available for inspection and reproduction to the
14 executive officer of the board or his or her duly authorized representative during
15 business hours. Original inspection reports or copies thereof shall be submitted to
16 the board upon request within two business days.

17 The following shall be set forth in the report:

18

19 2) The name and address of the person or firm ordering the report.

20 3) The name and address of any person who is a party in interest.

21

22 6) A foundation diagram or sketch of the structure or structures or portions
23 of the structure or structures inspected, indicating thereon the approximate
24 location of any infested or infected areas evident, and the parts of the structure
25 where conditions that would ordinarily subject those parts to attack by wood
26 destroying pests or organisms exists.

27 7) Information regarding the substructure, foundation walls and footings,
28 porches, patios and steps, air vents, abutments, attic spaces, roof framing that
includes the eaves, rafters, fascias, exposed timbers, exposed sheathing, ceiling
joists, and attic walls or other parts subject to attack by wood destroying pests or
organisms. Conditions usually deemed likely to lead to infestation, such as earth-
wood contacts, excessive cellulose debris, faulty grade levels, excessive moisture
conditions, evidence of roof leaks, and insufficient ventilation are to be reported.

29

30 10) Recommendations for corrective measures.

31 12. Code section 8518 states, in pertinent part:

32 When a registered company completes work under a contract, it
33 shall prepare, on a form prescribed by the board, a notice of work completed and
34 not completed, and shall furnish that notice to the owner of the property or the
35 owner's agent within 10 working days after completing the work. The notice

shall include a statement of the cost of the completed work and estimated cost of work not completed. The address of each property inspected or upon which work was completed shall be reported on a form prescribed by the board and shall be filed with the board no later than 10 working days after completed work. Every property upon which work is completed shall be assessed a filing fee pursuant to Section 8674. Failure of a registered company to report and file with the board the address of any property upon which work was completed pursuant to subdivision (b) of Section 8516, subdivision (b) of Section 8516.1, or Section 8518 are grounds for disciplinary action and shall subject the registered company to a fine or not more than two thousand five hundred dollars (\$2,500). The registered company shall retain for three years all original notices of work completed, work not completed and activity forms. Notices of work completed and not completed shall be made available for inspection and reproduction to the executive during business hours. Original notices of work completed or not completed or copies thereof shall be submitted to the board upon request within two business days.

13. Code section 8622 states:

When a complaint is accepted for investigation of a registered company, the board, through an authorized representative, may inspect any or all property on which a report has been issued pursuant to Section 8516 or a notice of completion has been issued pursuant to Section 8518 by the registered company to determine compliance with the provisions of this chapter and the rules and regulations issued thereunder. If the board determines the property or properties are not in compliance, a notice shall be sent to the registered company so stating. The registered company shall 30 days from the receipt of the notice to bring such property into compliance, and it shall submit a new original report or completion notice or both and an inspection fee of not more than one hundred twenty-five dollars (\$125) for each property inspected. If a subsequent reinspection is necessary, pursuant to the board's review of the new original report or notice or both, a commensurate reinspection fee shall also be charged. If the board's authorized representative makes no determination or determines the property is in compliance, no inspection fee shall be charged.

The notice sent to the registered company shall inform the registered company that if it desires a hearing to contest the finding of noncompliance, the hearing shall be requested by written notice to the board within 20 days of receipt of the notice of noncompliance from the board. Where a hearing is not requested pursuant to this section, payment of any assessment shall not constitute an admission of any noncompliance charged.

14. Code section 8638 states:

Failure on the part of a registered company to complete any operation or construction repairs for the price stated in the contract for such operation or construction repairs or in any modification of such contract is a ground for disciplinary action.

15. Code section 8641 states:

Failure to comply with the provisions of this chapter, or any rule or regulation adopted by the board, or the furnishing of a report of inspection without the making of a bona fide inspection of the premises for wood-destroying pests or organisms, or furnishing a notice of work completed prior to the completion of the

work specified in the contract, is a ground for disciplinary action.

16. Code section 8642 states:

That "[t]he commission of any grossly negligent or fraudulent act by the licensee as a pest control operator, field representative, or applicator or by a registered company is a ground for disciplinary action."

(Regulatory Provisions)

17. California Code of Regulations, title 16, section ("Regulation") 1937.14 states:

All work completed by licensees or registered companies shall be done within the specific requirements of any plans or specifications and shall meet accepted trade standards for good and workmanlike construction in any material respect, and shall comply with provisions of Section 2516(c)(1), (2), (4) and (6) of Title 24, California Code of Regulations.

18. Regulation 1990 states, in pertinent part:

(a) All reports shall be completed as prescribed by the board. Copies filed with the board shall be clear and legible. All reports must supply the information required by Section 8516 of the Code and the information regarding the pesticide or pesticides used as set forth in Section 8538 of the Code, and shall contain or describe the following:

....

(3) Infestations, infections or evidence thereof.

....

(b) Conditions usually deemed likely to lead to infestation or infection include, but are not limited to:

....

(2) Inaccessible subareas or portions thereof and areas where there is less than 12 inches clear space between the bottom of the floor joists and the unimproved ground area.

....

(4) Earth-wood contacts.

(5) Commonly controllable moisture conditions which would foster the growth of a fungus infection materially damaging to woodwork.

(e) Information regarding all accessible areas of the structure including but not limited to the substructure, foundation walls and footings, porches, patios and steps, stairways, air vents, abutments, stucco walls, columns, attached structures or other parts of a structure normally subject to attack by wood-destroying pests or organisms. . . .

19. Regulation 1991 states, in pertinent part:

(a) Recommendations for corrective measures for the conditions found shall be made as required by paragraph 9 of subdivision (b) of Section 8516 of the code and shall also conform with the provisions of Title 24 of the California Code of Regulations and any other applicable local building code, and shall accomplish the following:

.....

(5) Structural members which appear to be structurally weakened by wood-destroying pests to the point where they no longer serve their intended purpose shall be replaced or reinforced. Structural members which are structurally weakened by fungus to the point where they no longer serve their intended purpose shall be removed or, if feasible, may remain in place if another structural member is installed adjacent to it to perform the same function, if both members are dry (below 20% moisture content), and if the excessive moisture condition responsible for the fungus damage is corrected. Structural members which appear to have only surface fungus damage may be chemically treated and/or left as is if, in the opinion of the inspector, the structural member will continue to perform its originally intended function and if correcting the excessive moisture condition will stop the further expansion of the fungus.

.....

(8) Exterminate all reported wood-destroying pests. Such extermination shall not be considered repair under Section 8516(b)(12) of the code. If evidence indicates that wood-destroying pests extend into an inaccessible area(s), recommendations shall be made to either:

(A) Enclose the structure for an all encompassing treatment utilizing materials listed in Section 8505.1 of the code, or

(B) use another all encompassing method of treatment which exterminates the infestation of the structure, or

(C) locally treat by any or all of the following:

1. exposing the infested area(s) for local treatment,

2. removing the infested wood,

3. using another method of treatment which exterminates the infestation.

When a complete inspection is performed, a recommendation shall be made to remove or cover all accessible pellets and frass of wood-destroying pests.

When a limited inspection is performed, the inspection report shall state that the inspection is limited to the area(s) described and diagrammed. A recommendation shall be made to remove or cover all accessible pellets and frass of wood-destroying pests in the limited areas. The limited inspection report shall include a recommendation for further inspection of the entire structure and that all accessible evidence of wood-destroying pests be removed or covered.

20. Regulation 1993 states, in pertinent part:

All of the following reports must be in compliance with the requirements of Section 8516 of the code. All reports must be on the form prescribed by the board and filed with the board with stamps affixed.

(d) A supplemental report is the report on the inspection performed on inaccessible areas that have been made accessible as recommended on a previous report. Such report shall indicate the absence or presence of wood-destroying pests or organisms or conditions conducive thereto. This report can also be used to correct, add, or modify information in a previous report. A licensed operator or field representative shall refer to the original report in such a manner to identify it clearly.

(e) A reinspection report is the report on the inspections of item(s) completed as recommended on an original report or subsequent report(s). The areas reinspected can be limited to the items requested by the person ordering the original inspection report. A licensed operator or field representative shall refer to the original report in such a manner to identify it clearly.

Cost Recovery

21. Code section 125.3 states, in pertinent part, that a Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL BACKGROUND

22. On and between January 21, 2005, Respondent Y2 K performed a Wood Destroying Organisms Inspection ("WDO") at the subject property located at 1805 Raintree Place, San Bernardino, CA 92408.

23. On or around January 21, 2005, Respondent Dale Dawley, a field representative, performed the inspection and prepared the inspection report at the subject property. The inspection report made recommendations to repair, replace and/or reinforce the decay fungi damage, to chemically treat the visible and accessible drywood termites and to remove and/or cover accessible pellets, to repair, replace and/or reinforce the drywood termite damage.

On or around January 21, 2005, Respondent Edward Avilez, a field representative, performed the inspection and prepared the inspection report at the subject property. The inspection report failed to include accurate information regarding the foundation, decking, accessibility and other features. It indicated that the substructure area was a crawl, was 60% accessible and was dry with "above grade" ventilation. The structure is on a concrete slab and is 90% inaccessible. The report also indicated that the stall shower was tested and that there was no

1 deck; however, the subject property contains no stall shower and does contain an attached wood
2 deck.

3 24. On February 9, 2005, Respondent Y2K issued a standard notice of work
4 completed and not completed (Completion Notice) on the subject address. The Completion
5 Notice certified that all Respondent Dawley's recommendations had been completed and failed
6 to include the address of the individual or firm ordering the required information such as the
7 name or address of property owner/party of interest and the address where the report is to be sent.

8 25. On March 1, 2005, escrow closed on the subject address. On June 25,
9 2005, the homeowners, David and Emelda Coles, requested that another structural pest control
10 company, Terminix, inspect the subject address. Terminix made recommendations to remove
11 decking and earth-to-wood contact at the fence post and to fumigate the structure for drywood
12 termite and water damage.

13 26. On August 15, 2005, the Board received a complaint from the
14 homeowners which alleged that Respondent Y2K failed to properly report conditions related to
15 structural pest control, failed to make proper recommendations for corrective measures and failed
16 to properly complete the necessary work prior to the close of escrow.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Failure to Properly Prepare Inspection Report and Make Recommendations For**
19 **Corrective Measures)**

20 27. Respondents Y 2 K, Walker and Dawley are subject to disciplinary action
21 pursuant to Code section 8516 and Regulation 1990 in that in and around January 21, 2005, they
22 failed to prepare a proper inspection report as follows:

23 A. On the January 21, 2005 inspection report, Respondents failed to report the
24 earth-to-wood contact at the fence post, the evidence of excessive moisture condition (water
25 damage) at the garage siding and at the linoleum adjacent to the stool in the downstairs bathroom
26 and adjacent to the bathtub in the upstairs bathroom, and the sagging floor boards at the attached
27 wood deck. Respondents also failed to report that there was a deck attached to the structure and
28 erroneously included findings regarding a nonexistent stall shower in the report.

1 B. Respondents are subject to disciplinary action pursuant to Code section
2 8516(b)(10) in that in and around January 21, 2005, they failed to recommend proper corrective
3 measures relating to findings in the inspection report as follows:

4 On the January 21, 2005, inspection report, Respondents failed to make a proper
5 recommendation for corrective measures regarding the evidence of drywood termites reported at
6 the exterior framing of the subject property.

7 C. Respondents are subject to disciplinary action pursuant to Code section 8516 in
8 that in and around January 21, 2005, they failed to report damage at the subject property's
9 doorjamb and wood trim.

10 D. Respondents are subject to disciplinary action pursuant to Code section 8516
11 (b) in that they failed to file with the Board all of the WDO activities involving the incident
12 address, no later than ten business days after the commencement of an inspection or upon
13 completed work. Two of the October 8, 2005 inspection reports, all three of the October 28, 2005
14 inspection reports and the March 4, 2006 Completion Notice were not filed with the Board.

15 E. Respondents are subject to disciplinary action pursuant to Code section
16 8516(b)(2)(3) in that Respondents failed to indicate the name and address of the person or firm
17 requesting the report, and the name and address of any person who is a party in interest. The
18 January 21, 2005 inspection report failed to include the address of the person or firm requesting
19 the report and the name of the person who is a party in interest.

20
21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Failure to Properly Complete Repairs)**

23 28. Respondents Y 2 K, Walker and Dawley are subject to disciplinary action
24 pursuant to Code section 8638 in that approximately January 21, 2005 and February 9, 2005:

25 A. Respondents failed to complete the work regarding the repair of the drywood
26 termite damage reported at the exterior wood timbers. The damage was reported on the
27 January 21, 2005, inspection report and was certified as having been completed on the
28 February 9, 2005 Completion Notice. At present, drywood termite damage remains at the

1 reported area.

2 B. Respondents also failed to complete the work, regarding the lowering of the
3 reported earth-to-wood contact at the fence posts attached to the garage and chimney. The earth-
4 to-wood contact was reported on the October 22, 2005, and three different October 28, 2005
5 inspection reports, and was certified as having been completed on the December 4, 2005
6 Completion Notice. At present, earth-to-wood contact remains at the fence posts.

7 C. Respondents also failed to complete the work regarding the repair of the
8 reported water stained/damaged linoleum in the downstairs bathroom. The water
9 stained/damaged linoleum was reported on three different October 8, 2005 inspection reports.
10 The October 22, 2005 inspection report and three different October 28, 2005 inspection reports
11 were certified as having been completed on the December 4, 2005 Completion Notice. At
12 present, water stained/damaged linoleum remained at the subject property's linoleum bathroom
13 floor.

14 D. Respondents also failed to complete the work regarding the lowering of the
15 reported earth-to-wood contact at the fence posts attached to the garage and chimney. The earth-
16 to-wood contact was reported on the October 22, 2005, and three different October 28, 2005
17 inspection reports, and was certified as having been completed on the March 4, 2006 Completion
18 Notice. At present, earth-to-wood contact remains at the fence posts.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Failure to Deliver and Prepare a Proper Inspection Report)**

21 29 Respondents Y 2 K, Walker and Dawley are subject to disciplinary action
22 pursuant to Regulation section 1993(d)(e) in that on or about October 8, 2005, Respondents
23 failed to prepare and deliver a proper inspection report regarding the subject property.

24
25 **FOURTH CAUSE FOR DISCIPLINE**

26 **(Fraud)**

27 30. Respondent Avilez is subject to disciplinary action pursuant to Code section
28 8642 in that in and around January 21, 2005, he committed fraudulent acts as follows:

1 In violation of Code section 8642, Respondent failed to issue a proper inspection
2 report. The January 21, 2005 inspection report indicated that the substructure was a "crawl/
3 accessible/dry," when the structure is on a concrete slab. The report indicated that the stall
4 shower "tested OK," when the subject property contains no stall shower. The report indicated
5 foundation was "concrete above grade," the porches/steps were "concrete earth fill" and that the
6 ventilation "appears OK above grade" when the structure is on a concrete slab. Also, the report
7 indicated the attic was, "60% accessible," when in fact it is 90% inaccessible. Finally, under
8 decks/patios, the report it indicated "none." However, the subject house contains an attached
9 wood deck.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 **(Poor Workmanship)**

12 31. Respondents Y 2 K and Walker are subject to disciplinary action pursuant to Code section
13 8641 in that they failed to comply with Regulation 1937.14 by failing to perform the corrective
14 repairs at the subject property in a good and workmanlike manner in the following respects:

15 a. Respondents' patchwork repair of the decay fungi damage at the front porch
16 pillar was excessive, sloppily applied, and not properly sanded.

17 b. Respondents' repair of the unreported damage at the garage doorjamb
18 included wood trim that was not properly caulked, nailed or puttied.

19 c.. Respondents failed to complete the work regarding the repair of the drywood
20 termite damage reported at the exterior wood timbers. The damage was reported on the
21 January 21, 2005, inspection report and was certified as having been completed on the
22 February 9, 2005 Completion Notice. At present, drywood termite damage remains.

23 d. Respondents also failed to complete the work, regarding the lowering of the
24 reported earth-to-wood contact at the fence posts attached to the garage and chimney. The earth-
25 to-wood contact was reported on the October 22, 2005, and three different October 28, 2005
26 inspection reports, and was certified as having been completed on the December 4, 2005
27 Completion Notice. At present, earth-to-wood contact remains at the fence posts.

28 e. Respondents also failed to complete the work regarding the repair of the reported

1 water stained/damaged linoleum in the downstairs bathroom. The water stained/damaged
2 linoleum was reported on three different October 8, 2005 inspection reports, the October 22,
3 2005 inspection report, and three different October 28, 2005 inspection reports and was certified
4 as having been completed on the December 4, 2005 Completion Notice. At present, the reported
5 water stained and damaged linoleum remains at the subject property's linoleum bathroom floor.

6 f. Respondents also failed to complete the work regarding the lowering of the reported
7 earth-to-wood contact at the fence posts attached to the garage and chimney. The earth-to-wood
8 contact was reported on the October 22, 2005, and three different October 28, 2005 inspection
9 reports, and was certified as having been completed on the March 4, 2006 Completion Notice.
10 At present, earth-to-wood contact remains at the fence posts in the subject property's exterior.

11 12 SIXTH CAUSE FOR DISCIPLINE

13 (Failure to Comply with Board's Notice)

14 32. Respondents Y 2 K and Walker are subject to discipline pursuant to
15 Code section 8641 in that as to the subject property, it failed to comply with Code section 8622
16 Respondents failed to correct all of the items described in the October 3, 2005 Report of
17 Findings, within thirty calendar days of receipt of the Board's notice dated March 4, 2006.

18 19 SEVENTH CAUSE FOR DISCIPLINE

20 (Failure to Comply with Board Regulations)

21 33 All Respondents are subject to disciplinary action pursuant to Code section
22 8641 in that they failed to comply with Code section 8516, 8518, 8622, and 8642 as set forth in
23 paragraph 1 through 32 above.

24 OTHER MATTERS

25 34. Pursuant to Code section 8624, the causes for discipline established as to
26 Respondent Y 2 K Exterminating likewise constitute causes for discipline against Nancy Ann
27 Walker regardless of whether Nancy Ann Walker had knowledge of or participated in the acts or
28 omissions which constitute causes for discipline against Respondent Y 2 K Exterminating.

1 35. Pursuant to Code section 8624, if Operator's License Number OPR 10501,
2 issued to Nancy Ann Walker, is suspended or revoked, the Board may suspend or revoke
3 Company Registration Certificate Number PR 4287 issued to Y 2 K Exterminating, with Nancy
4 Ann Walker as qualifying Manager.

36. Pursuant to Code section 8624, if Operator's License Number OPR 10501, issued to Nancy Ann Walker, is suspended or revoked, the Board may suspend or revoke Branch Office Registration Number BR 4945, issued to Y 2 K Exterminating with Nancy Ann Walker as branch office supervisor.

9 | *///*

10 || |||

11 |||

PRAYER

13 WHEREFORE, Complainant requests that a hearing be held on the matters herein
14 alleged, and that following the hearing, the Structural Pest Control Board issue a decision:

15 1. Revoking or suspending Company Registration Certificate Number
16 PR 4287, issued to Y 2 K Exterminating;

17 2. Revoking or suspending Branch Office Registration Number BR 4945,
18 issued to Y 2 K Exterminating;

19 3. Revoking or suspending Operator's License Number OPR 10501, issued to
20 Nancy Ann Walker;

21 4. Revoking or suspending Field Representative's License Number FR
22 34165, issued to Edward Andrew Avilez, Jr.;

23 5. Revoking or suspending Field Representative's License Number FR3978
24 issued to Dale Edward Dawley;

25 6. Ordering Respondents Y 2 K Exterminating, Nancy Ann Walker, Edward
26 Andrew Avilez, Jr., and/or Dale Edward Dawley to pay the Structural Pest Control Board the
27 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
28 Professions Code section 125.3;

7. Taking such other and further action as deemed necessary and proper.

DATED: 8/15/06

KELLI OKUMA

Registrar

Structural Pest Control Board

Department of Consumer Affairs

State of California

Complainant

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phd; 03/28/2006

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7
8 **BEFORE THE**
9 **STRUCTURAL PEST CONTROL BOARD**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2006-61

13 **Y 2 K EXTERMINATING**

Rodrigo Lopez, a.k.a. Rigo Lopez, Owner
14 Nancy Ann Walker, Qualifying Manager
2021 Troy Avenue
15 South El Monte, CA 91733
Company Registration Certificate No. PR 4287,

A C C U S A T I O N

16 **Y 2 K EXTERMINATING**

Nancy Ann Walker, Branch Office Supervisor
17 7974 Haven Avenue, Suite 180
Rancho Cucamonga, CA 91730
Branch Office Registration No. BR 4945,

18 **NANCY ANN WALKER**

19 2021 Troy Avenue
South El Monte, CA 91733
Operator's License No. OPR 10501,

20 **EDWARD ANDREW AVILEZ, JR.**

21 2021 Troy Avenue
22 South El Monte, CA 91733
Field Representative's License No. FR 34165,

23 and

24 **JUAN MANUEL ARTEAGA**

25 3831 Arden Drive
El Monte, CA 91731
26 Registered Applicator's License No. RA 9518

27 Respondents.
28

Complainant alleges:

PARTIES

1. Kelli Okuma ("Complainant") brings this Accusation solely in her official capacity as the Registrar of the Structural Pest Control Board ("Board"), Department of Consumer Affairs.

**Y 2 K Exterminating
Company Registration Certificate No. PR 4287**

2. On or about March 25, 2003, the Board issued Company Registration Certificate Number PR 4287 in Branch 3 (termite) to Y 2 K Exterminating ("Respondent Y 2 K"), with Rodrigo Lopez, also known as Rigo Lopez ("Lopez"), as owner and Nancy Ann Walker ("Respondent Walker"), as qualifying manager. On October 18, 2005, Respondent Y 2 K paid a fine of \$503 levied by the Board for said Respondent's violation of Business and Professions Code ("Code") section 8516, subdivision (b).

**Y 2 K Exterminating
Branch Office Registration No. BR 4945**

3. On or about September 15, 2003, the Board issued Branch Office Registration Number BR 4945 to Respondent Y 2 K with Respondent Walker as branch office supervisor.

**Nancy Ann Walker
Operator's License No. OPR 10501**

4. On or about November 20, 2001, the Board issued Operator's License Number OPR 10501 in Branch 3 to Respondent Walker, employee of Gallatin Exterminators, Inc. ("Gallatin"). Respondent left the employ of Gallatin on February 11, 2003. On March 25, 2003, Respondent became the qualifying manager for Respondent Y 2 K. On September 15, 2003, Respondent became the branch office supervisor for Respondent Y 2 K. Respondent's operator's license will expire on June 30, 2007, unless renewed.

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Edward Andrew Avilez, Jr.
Field Representative's License No. FR 34165

5. On or about January 16, 2002, the Board issued Field Representative's License Number FR 34165 in Branch 3 to Edward Andrew Avilez, Jr. ("Respondent Avilez"), employee of Tri-Ace Termite & Pest Control ("Tri-Ace"). Respondent left the employ of Tri-Ace on September 20, 2002. On January 15, 2005, Respondent became employed by Respondent Y 2 K. Respondent's field representative's license will expire on June 30, 2007, unless renewed.

Juan Manuel Arteaga
Registered Applicator's License No. RA 9518

6. On or about May 13, 1998, the Board issued Registered Applicator's License Number RA 9518 to Juan Manuel Arteaga ("Respondent Arteaga"), employee of Termicon Exterminators, Inc. Respondent's registered applicator's license expired on May 13, 2004.

JURISDICTION

7. Code section 8620 provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the holder, while a licensee or applicant, has committed any acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a civil penalty.

8. Code section 8625 states:

The lapsing or suspension of a license or company registration by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license or company registration shall not deprive the board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such licensee or company, or to render a decision suspending or revoking such license or registration.

9. Code section 8624 states:

If the board suspends or revokes an operator's license and one or more branch offices are registered under the name of the operator, the suspension or revocation may be applied to each branch office.

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1 If the operator is the qualifying manager, a partner, responsible officer, or
2 owner of a registered structural pest control company, the suspension or
revocation may be applied to the company registration.

3 The performance by any partnership, corporation, firm, association, or
4 registered company of any act or omission constituting a cause for disciplinary
5 action, likewise constitutes a cause for disciplinary action against any licensee
6 who, at the time the act or omission occurred, was the qualifying manager, a
partner, responsible officer, or owner of the partnership, corporation, firm,
association, or registered company whether or not he or she had knowledge of, or
participated in, the prohibited act or omission.

7 STATUTORY PROVISIONS

8 10. Code section 8516 states, in pertinent part:

9

10 (b) No registered company or licensee shall commence work on a
11 contract, or sign, issue, or deliver any documents expressing an opinion or
12 statement relating to the absence or presence of wood destroying pests or
13 organisms until an inspection has been made by a licensed Branch 3 field
14 representative or operator. The address of each property inspected or upon which
work is completed shall be reported on a form prescribed by the board and shall
be filed with the board no later than 10 business days after the commencement of
an inspection or upon completed work.

15 Every property inspected pursuant to this subdivision or Section 8518
shall be assessed a filing fee pursuant to Section 8674.

16 Failure of a registered company to report and file with the board the
17 address of any property inspected or work completed pursuant to Section 8518 or
18 this section is grounds for disciplinary action and shall subject the registered
company to a fine of not more than two thousand five hundred dollars (\$2,500).

19 A written inspection report conforming to this section and a form
20 approved by the board shall be prepared and delivered to the person requesting the
21 inspection or to the person's designated agent within 10 business days of the
22 inspection, except that an inspection report prepared for use by an attorney for
litigation purposes is not required to be reported to the board. The report shall be
delivered before work is commenced on any property. The registered company
shall retain for three years all original inspection reports, field notes, and activity
forms.

23 Reports shall be made available for inspection and reproduction to the
24 executive officer of the board or his or her duly authorized representative during
25 business hours. Original inspection reports or copies thereof shall be submitted to
the board upon request within two business days . . .

26 11. Code section 8550 states, in pertinent part:

27 (a) It is unlawful for any individual to engage or offer to engage in the
28 business or practice of structural pest control, as defined in Section 8505, unless
he or she is licensed under this chapter.

1 (b) Notwithstanding subdivision (a), an unlicensed individual may solicit
2 pest control work on behalf of a structural pest control company only if the
3 company is registered pursuant to this chapter, and the unlicensed individual does
4 not perform or offer to perform any act for which an operator, field representative,
5 or applicator license is required pursuant to this chapter. As used in this
6 subdivision, to "solicit pest control work" means to introduce consumers to a
7 registered company and the services it provides, to distribute advertising
8 literature, and to set appointments on behalf of a licensed operator or field
9 representative.

10 (c) It is unlawful for an unlicensed individual, soliciting pest control work
11 on behalf of a registered structural pest control company pursuant to subdivision
12 (b), to perform or offer to perform any act for which an operator, field
13 representative, or applicator license is required, including, but not limited to,
14 performing or offering pest control evaluations or inspections, pest identification,
15 making any claims of pest control safety or pest control efficacy, or to offer price
16 quotes other than what is provided and printed on the company advertising or
17 literature, or both . . .

18 12. Code section 8639 states:

19 Aiding or abetting an unlicensed individual or unregistered company to
20 evade the provisions of this chapter [the Structural Pest Control Act] or knowingly
21 combining or conspiring with an unlicensed individual or unregistered company,
22 or allowing one's license or company registration to be used by an unlicensed
23 individual or unregistered company, or acting as agent or partner or associate, or
24 otherwise, of an unlicensed individual or unregistered company to evade the
25 provisions of this chapter is a ground for disciplinary action.

26 13. Code section 8641 states:

27 Failure to comply with the provisions of this chapter, or any rule or
28 regulation adopted by the board, or the furnishing of a report of inspection without
the making of a bona fide inspection of the premises for wood-destroying pests or
organisms, or furnishing a notice of work completed prior to the completion of the
work specified in the contract, is a ground for disciplinary action.

14. Code section 8642 states that "[t]he commission of any grossly negligent
or fraudulent act by the licensee as a pest control operator, field representative, or applicator or
by a registered company is a ground for disciplinary action."

15. Code section 8652 states:

Failure of a registered company to make and keep all inspection reports,
field notes contracts, documents, notices of work completed, and records, other
than financial records, for a period of not less than three years after completion of
any work or operation for the control of structural pests or organisms, is a ground
for disciplinary action. These records shall be made available to the executive
officer of the board or his or her duly authorized representative during business
hours.

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Cost Recovery

16. Code section 125.3 states, in pertinent part, that a Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL BACKGROUND

17. On and between May 6, 2004, and August 17, 2004, Respondent Y 2 K (hereinafter "Y 2 K") reported and filed with the Board the addresses of approximately 1,108 properties that were allegedly inspected by Y 2 K's licensed field representatives Victor Romero ("Romero"), Anthony Munoz, Freddy Duron, and Dale Edward Dawley ("Dawley"). Approximately 891 of those inspections were allegedly performed by Romero.^{1/} Y 2 K also reported and filed with the Board the addresses of approximately 483 properties where structural pest control work was completed on behalf of Y 2 K.^{2/}

18. On and between November 1, 2004, and November 30, 2004, Y 2 K reported and filed with the Board the addresses of approximately 645 properties that were allegedly inspected by Romero and Dawley and approximately 314 properties where structural pest control work was completed on behalf of Y 2 K.^{3/}

19. On and between February 1, 2005, and February 28, 2005, Y 2 K reported and filed with the Board the addresses of approximately 298 properties that were allegedly inspected by Dawley.

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1. Based upon the information provided by Respondent Y 2 K, Romero allegedly performed an average of 14 to 16 Wood Destroying Pests and Organisms inspections per day.

2. The information provided by Respondent indicates that Respondent completed an average of 10 or 11 jobs (corrective repairs allegedly recommended by Respondent's field representatives) per day.

3. Romero allegedly performed an average of 11 inspections per day; Dawley allegedly performed an average of 13 inspections per day. Respondent completed an average of 16 jobs per day.

20. In or about August 2005, Y 2 K reported and filed with the Board the addresses of approximately 517 properties that were allegedly inspected by Respondent Avilez (hereinafter "Avilez")⁴ and approximately 366 properties that were allegedly inspected by Dawley.

21. On September 14, 2005, and September 19, 2005, Board Specialist Steven R. Smith ("Smith") went to Y 2 K's office located in South El Monte, California, and requested copies of the pest control firm's inspection records, including inspection reports and inspector's field sheets for the last three years. Y 2 K's office personnel were unable to produce any of the requested documentation, with the exception of two field sheets for inspections conducted on February 8, 2005.

22. On and between September 1, 2005, and September 25, 2005, Y 2 K reported and filed with the Board the addresses of approximately 465 properties that were allegedly inspected by Avilez, approximately 347 properties that were allegedly inspected by Dawley, and 13 properties that were allegedly inspected by Mike Simpson ("Simpson").

23. On September 26, 2005, Smith returned to Y 2 K's office and met with the owner, Lopez. Lopez told Smith that Y 2 K's inspectors were Dawley, Simpson, and Avilez and its crew members were Elpidio Perez, Alan Spencer, and Respondent Arteaga. Respondent Arteaga was out working in the field that day, although his registered applicator's license had expired on May 13, 2004. Lopez admitted in a declaration provided to Smith that unlicensed individuals had been making inspections on behalf of Y 2 K. Smith gave a list of properties to the operations manager, Robert Lopez, and requested copies of the inspection reports and field sheets pertaining to the inspections performed at the properties.

24. On October 4, 2005, Smith went to Y 2 K's office in South El Monte and asked Robert Lopez whether he had the documents Smith had requested on September 26, 2005. Robert Lopez did not have the requested documentation.

4. Avilez allegedly performed an average of 22 inspections per day. On August 11, 2005, Avilez allegedly performed 45 inspections throughout Southern California, including Hemet, Norwalk, Altadena, Perris, San Bernardino, Chino, Arcadia, Los Angeles, La Mirada, Fontana, Moreno Valley, Lake Elsinore, Canyon Country, Montebello, Chatsworth, Murrieta, Sun City, Alhambra, Montclair, Riverside, and Westchester.

1 25. On October 22, 2005, Smith met with Avilez. Avilez told Smith that he
2 normally performed between five and seven inspections per day. Smith showed Avilez
3 documentation indicating that he was performing 20 to 40 inspections per day. Avilez told Smith
4 that he had a signature stamp that the office used to stamp his inspection reports and that he had
5 "lost track of it." Avilez suggested to Smith that someone must be using the signature stamp to
6 stamp inspection reports that were not his, which would explain the figures. Smith told Avilez
7 that he was responsible for checking the contents and accuracy of his inspection reports before he
8 signs them and that no one should have access to his signature stamp.

9 **Respondent Y 2 K Exterminating:**

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Aiding and Abetting Unlicensed Individuals)**

12 26. Respondent Y 2 K is subject to disciplinary action pursuant to Code
13 section 8639 in that in and between May 2004, and October 2005, it aided or abetted, knowingly
14 combined or conspired with, or acted as agent or partner or associate, or otherwise, of unlicensed
15 individuals, including, but not limited to, Respondent Arteaga, to evade the provisions of the
16 Structural Pest Control Act.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Failure to Make Bona Fide WDO Inspections)**

19 27. Respondent Y 2 K is subject to disciplinary action pursuant to Code
20 section 8641 in that in and between May 2004, and October 2005, Respondent furnished Wood
21 Destroying Pests and Organisms ("WDO") inspection reports to an unknown number of
22 consumers without the making of bona fide inspections of the consumers' premises for
23 wood-destroying pests or organisms in that the WDO inspections were performed by unlicensed
24 individuals.

25 ///

26 ///

27 ///

28 ///

THIRD CAUSE FOR DISCIPLINE**(Fraud)**

28. Respondent Y 2 K is subject to disciplinary action pursuant to Code section 8642 in that in and between May 2004, and October 2005, it committed fraudulent acts as follows:

a. Respondent perpetuated a fraud against the Board and consumers by aiding or abetting, knowingly combining or conspiring with, or acting as agent or partner or associate or otherwise, of unlicensed individuals, by allowing or permitting said unlicensed individuals to conduct inspections of the consumers' premises for wood-destroying pests or organisms, therefore depriving an unknown number of consumers of bona fide WDO inspections of their properties.

b. Respondent falsely represented on its report forms or documentation submitted to the Board that its WDO inspections were performed by licensed field representatives, including Victor Romero, Anthony Munoz, Freddy Duron, Dale Edward Dawley, Mike Simpson, and Respondent Avilez, when, in fact, an known number of inspections were conducted by unlicensed individuals.

FOURTH CAUSE FOR DISCIPLINE**(Failure to Maintain Records Relating to
Structural Pest Control Activities)**

29. Respondent Y 2 K is subject to disciplinary action pursuant to Code section 8652 in that it failed to keep all of its inspection records, including inspection reports, field notes, contracts, documents, notices of work completed, and related records, for a period of not less than three years after completion of work or operations for the control of structural pests or organisms. Further, Respondent failed to make its inspection records available to Board Specialist Steven R. Smith on September 14, 2005, September 19, 2005, September 26, 2005, and October 4, 2005.

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1 **Respondent Edward Andrew Avilez, Jr.**

2 **FIFTH CAUSE FOR DISCIPLINE**

3 **(Aiding and Abetting Unlicensed Individuals)**

4 30. Respondent Avilez is subject to disciplinary action pursuant to Code
5 section 8639 in that in and between January 15, 2005, and October 2005, he aided or abetted,
6 knowingly combined or conspired with, allowed his field representative's license to be used by,
7 or acted as agent or partner or associate, or otherwise, of unlicensed individuals, to evade the
8 provisions of the Structural Pest Control Act, as follows: Respondent Avilez allowed
9 Respondent Y 2 K to use his signature stamp to stamp Wood Destroying Pests and Organisms
10 inspection reports prepared by unlicensed individuals.

11 **Respondent Juan Manuel Arteaga**

12 **SIXTH CAUSE FOR DISCIPLINE**

13 **(Unlicensed Activity)**

14 31. Respondent Juan Manuel Arteaga is subject to disciplinary action pursuant
15 to Code section 8641 in that on or about September 26, 2005, he failed to comply with Code
16 section 8550, subdivision (a), by engaging in or offering to engage in the business or practice of
17 structural pest control when, in fact, his registered applicator's license was not valid, as set forth
18 in paragraph 6 above.

19 **OTHER MATTERS**

20 32. Code section 8620 provides, in pertinent part, that a respondent may
21 request that a civil penalty of not more than \$5,000 be assessed in lieu of an actual suspension of
22 1 to 19 days, or not more than \$10,000 for an actual suspension of 20 to 45 days. Such request
23 must be made at the time of the hearing and must be noted in the proposed decision. The
24 proposed decision shall not provide that a civil penalty shall be imposed in lieu of a suspension.

25 33. Pursuant to Code section 8624, the causes for discipline established as to
26 Respondent Y 2 K Exterminating likewise constitute causes for discipline against Nancy Ann
27 Walker regardless of whether Nancy Ann Walker had knowledge of or participated in the acts or
28 omissions which constitute causes for discipline against Respondent Y 2 K Exterminating.

34. Pursuant to Code section 8624, if Operator's License Number OPR 10501, issued to Nancy Ann Walker, is suspended or revoked, the Board may suspend or revoke Company Registration Certificate Number PR 4287 issued to Y 2 K Exterminating, with Nancy Ann Walker as qualifying Manager.

35. Pursuant to Code section 8624, if Operator's License Number OPR 10501, issued to Nancy Ann Walker, is suspended or revoked, the Board may suspend or revoke Branch Office Registration Number BR 4945, issued to Y 2 K Exterminating with Nancy Ann Walker as branch office supervisor.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Structural Pest Control Board issue a decision:

1. Revoking or suspending Company Registration Certificate Number PR 4287, issued to Y 2 K Exterminating;

2. Revoking or suspending Branch Office Registration Number BR 4945,
issued to Y 2 K Exterminating;

3. Revoking or suspending Operator's License Number OPR 10501, issued to Nancy Ann Walker;

4. Revoking or suspending Field Representative's License Number FR 34165, issued to Edward Andrew Avilez, Jr.;

5. Revoking or suspending Registered Applicator's License Number RA 9518, issued to Juan Manuel Arteaga;

6. Ordering Respondents Y 2 K Exterminating, Nancy Ann Walker, Edward Andrew Avilez, Jr., and/or Juan Manuel Arteaga, to pay the Structural Pest Control Board the

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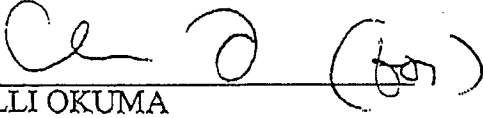
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1 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
2 Professions Code section 125.3;

3 7. Taking such other and further action as deemed necessary and proper.

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5 DATED: 3/31/06

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8 KELLI OKUMA
9 Registrar
10 Structural Pest Control Board
11 Department of Consumer Affairs
12 State of California

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